

SUPREME COURT OF CALIFORNIA

Ramirez v. Nelson

44 Cal. 4th 908 (2008) · No. S143819 · Decided August 4, 2008

SUMMARY

The Supreme Court of California held that Penal Code section 385(b) does not establish a special duty of care owed by homeowners to a worker injured while operating equipment near high-voltage power lines. Because the statute could not support a negligence per se theory under Evidence Code section 669 on these facts, the court did not decide whether the worker was the homeowners' employee under Labor Code section 2750.5. The court reversed the Court of Appeal's judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Baxter, J.; George, C. J.; Kennard, J.; Werdegar, J.; Chin, J.; Moreno, J.; Corrigan, J.
JURISDICTION	California
DECIDED	August 4, 2008
DOCKET	S143819
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs in a wrongful death and negligence action appealed after a jury returned a verdict for the defendant homeowners. The Court of Appeal reversed and remanded, holding that Penal Code section 385(b) supported a negligence per se theory and that the decedent was the homeowners' employee by operation of law. The California Supreme Court granted review and reversed.
STANDARD OF REVIEW	Statutory interpretation and the legal applicability of Evidence Code section 669 were reviewed as questions of law. The propriety of the jury instructions was reviewed in light of those legal determinations.
PRECEDENTIAL VALUE	Published and precedential California Supreme Court opinion
PARTIES	Maria Dolores Ramirez, Martin Flores v. Thomas Nelson, Vivian Nelson

TOPICS

wrongful death

negligence

duty of care

statutory interpretation

evidence

PRACTICE AREAS

Torts

Wrongful death

Premises liability

Statutory interpretation

Evidence

QUESTIONS PRESENTED

1. Whether Penal Code section 385(b), which criminalizes moving tools or equipment within six feet of a high-voltage overhead conductor, establishes a special duty of care owed by homeowners to a worker injured while violating the statute, such that the plaintiffs were entitled to negligence per se instructions under Evidence Code section 669.
2. Whether the decedent was the homeowners' employee by operation of law under Labor Code section 2750.5 for purposes of imposing vicarious tort liability under Penal Code section 385(b).

HOLDINGS

1. Penal Code section 385(b) does not establish a special duty or standard of care owed by homeowners to an employee or contractor worker who is injured by the worker's own operation of tools near a high-voltage line. The statute therefore could not support negligence per se instructions under Evidence Code section 669, and the trial court properly instructed the jury only on plaintiffs' common law negligence theory.
2. The court did not decide whether the decedent was the homeowners' employee by operation of law under Labor Code section 2750.5 for purposes of tort liability because that question was moot after the court held that Penal Code section 385(b) did not establish a special duty supporting plaintiffs' theory.

KEY QUOTATIONS

“The standard of care imposed by section 385(b), properly characterized, amplifies the duty owed by persons using tools or operating equipment near power lines to anyone in the world at large who might be injured by such conduct.” (44 Cal. 4th at 918-919)

“What section 385(b) does not do is create or modify a duty to oneself to exercise due care, for “one does not have a legal duty to avoid harming himself.”” (44 Cal. 4th at 919)

“Section 385(b) also does not create a separate duty or standard of care owed by an employer to an employee engaged in the operation of tools or equipment in close proximity to high voltage lines.” (44 Cal. 4th at 919)

FACTUAL BACKGROUND

Luis Flores, a worker for an unlicensed tree-trimming contractor, was electrocuted while using a polesaw in a eucalyptus tree at the Nelsons' home. The tree was near openly visible high-voltage power lines, and the polesaw contacted a power line, although no one witnessed the accident. The Nelsons had hired the contractor, did not supervise the work or furnish the tools, and believed the contractor operated a professional service. Flores's parents sued the homeowners, alleging that they negligently failed to maintain the property safely and failed to warn the contractor and workers about the power lines.

PROCEDURAL HISTORY

The trial court refused to instruct the jury on Penal Code section 385(b), Evidence Code section 669, or plaintiffs' negligence per se theory, and submitted the case under ordinary negligence instructions. Although the jury found the homeowners negligent, it found their negligence was not a substantial factor in causing the decedent's death, and judgment was entered for the homeowners. The Court of Appeal reversed, but the California Supreme Court concluded that section 385(b) did not establish a special duty of care owed by the homeowners to the decedent and therefore reversed the Court of Appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded for further proceedings consistent with the court's opinion.

CASES CITED

- State Compensation Ins. Fund v. Workers' Comp. Appeals Bd., 40 Cal. 3d 5, 15 (1985)
- Fernandez v. Lawson, 31 Cal. 4th 31, 36-38 (2003)
- Capolungo v. Bondi, 179 Cal. App. 3d 346, 350 (1986)
- Sierra-Bay Fed. Land Bank Assn. v. Superior Court, 227 Cal. App. 3d 318, 333, 336 (1991)
- Walters v. Sloan, 20 Cal. 3d 199, 206-207 (1977)
- Stafford v. United Farm Workers, 33 Cal. 3d 319, 324 (1983)
- Mark v. Pacific Gas & Electric Co., 7 Cal. 3d 170, 183 (1972)
- Hosking v. San Pedro Marine, Inc., 98 Cal. App. 3d 98, 102 (1979)
- Cade v. Mid-City Hosp. Corp., 45 Cal. App. 3d 589, 596-597 (1975)
- Sears v. Morrison, 76 Cal. App. 4th 577, 581 (1999)
- Kinsman v. Unocal Corp., 37 Cal. 4th 659, 673-675 (2005)
- Benard v. Vorlander, 87 Cal. App. 2d 436, 443 (1948)

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