

SUPREME COURT OF NEBRASKA

Roskop Dairy, L.L.C. v. GEA Farm Technologies, Inc., and Midwest Livestock Systems, Inc.

292 Neb. 148 (2015) · No. No. S-14-115 · Decided December 4, 2015

SUMMARY

The Nebraska Supreme Court reviewed a summary judgment ruling in favor of the manufacturer and dealer of a dairy milking-control system. The court addressed expert testimony, causation, product-defect theories, discovery, and prejudgment interest, concluding that the dairy failed to present admissible evidence linking the defendants' equipment to the alleged damages while reversing the ruling in part concerning the dealer's counterclaim and prejudgment interest.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Connolly, J.; Stephan, J.; Miller-Lerman, J.; Cassel, J.; Heavican, C.J., participating on briefs
JURISDICTION	Nebraska
DECIDED	December 4, 2015
DOCKET	No. S-14-115
DISPOSITION	reversed
PROCEDURAL POSTURE	Roskop Dairy appealed from summary judgment for GEA Farm Technologies and Midwest Livestock Systems and from an award of prejudgment interest to Midwest on its counterclaim for the unpaid purchase balance.
STANDARD OF REVIEW	The court reviews de novo whether the trial court applied the correct legal standards for admitting expert testimony, but reviews the application of those standards for abuse of discretion. Summary judgment is reviewed by viewing the evidence in the light most favorable to the nonmoving party and granting that party the benefit of all reasonable inferences. Discovery rulings are reviewed for abuse of discretion. Whether prejudgment interest is available is reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES

Roskop Dairy, L.L.C. v. GEA Farm Technologies, Inc., Midwest Livestock Systems, Inc.

TOPICS[expert testimony](#)[daubert standard](#)[products liability](#)[proximate cause](#)[standard of review](#)**PRACTICE AREAS**[products liability](#)[commercial litigation](#)[evidence](#)[contracts](#)[appellate procedure](#)[remedies](#)**QUESTIONS PRESENTED**

1. Whether the district court properly excluded portions of William Wailes' and Michael Slattery's testimony concerning the mechanical and medical causation of mastitis.
2. Whether Roskop Dairy presented admissible evidence creating a genuine issue of material fact that the Dematron was defective, negligently installed, or the proximate cause of the alleged injuries.
3. Whether the malfunction theory permitted Roskop Dairy to establish defect or causation through circumstantial evidence.
4. Whether the district court abused its discretion in partially denying Roskop Dairy's motion to compel discovery.
5. Whether Midwest's claim for the unpaid purchase balance was liquidated so that prejudgment interest was recoverable.

HOLDINGS

1. Summary judgment was proper because Roskop Dairy failed to produce admissible evidence creating a genuine issue that the Dematron was the proximate cause of the alleged injury. The defendants established a prima facie case that improper maintenance of non-Dematron components caused the units to detach under vacuum, and Roskop Dairy's evidence relied on speculation and temporal correlation.
2. Proximate cause is a necessary element of claims proceeding under negligence, product-defect theories, or breach of express warranty.
3. The malfunction theory may permit a plaintiff to prove the existence of a product defect circumstantially without identifying a specific defect, but it does not establish proximate cause and cannot relieve the plaintiff of proving the other elements of the claim.
4. A causation opinion based solely on temporal correlation is scientifically unreliable and does not constitute a reasonable inference sufficient to create a genuine issue of material fact.
5. The district court did not abuse its discretion in partially denying the motion to compel or in finding sealed exhibit 9 protected by attorney-client and work-product privileges.
6. Midwest was not entitled to prejudgment interest because its claim was not liquidated before discovery was completed; there was a reasonable controversy concerning Roskop Dairy's right to recover.

KEY QUOTATIONS

“It is well settled that a causation opinion based solely on a temporal relationship is not derived from the scientific method and is therefore unreliable.” (at 173)

“In any event, the malfunction theory would not serve to create a material issue on the element of proximate cause, because it is a theory only utilized to prove the element of defect.” (at 180)

“Roskop’s eyewitness observation of a temporal correlation between installation of the Dematron and the units detaching under vacuum calls for speculation and is insufficient to create an issue of fact on the essential element of proximate cause.” (at 181)

FACTUAL BACKGROUND

Roskop Dairy purchased and installed a GEA Dematron 60 Air Detacher Package in its commercial milking operation. After installation, Roskop Dairy alleged that incorrect parameter settings caused milking units to detach while under vacuum, injuring cows' teats and causing mastitis and reduced milk production. The record also showed that the herd's somatic cell count had increased before installation, that employees used deficient hygiene practices, and that many claw lenses were missing vents or had vents installed upside down. Defendants' expert attributed the detachment problem to improper maintenance of those physical components rather than to the Dematron.

PROCEDURAL HISTORY

The Gage County District Court excluded portions of the causation testimony of Roskop Dairy's proposed experts, granted defendants summary judgment on Roskop Dairy's negligence and warranty claims, and granted Midwest summary judgment on its counterclaim for the unpaid purchase balance plus prejudgment interest. The Nebraska Supreme Court affirmed summary judgment for defendants but reversed the award of prejudgment interest.

DISPOSITION

reversed

CASES CITED

- King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009)
- Rent-A-Roofer v. Farm Bureau Prop. & Cas. Ins. Co., 291 Neb. 786, 869 N.W.2d 99 (2015)
- Farmington Woods Homeowners Assn. v. Wolf, 284 Neb. 280, 817 N.W.2d 758 (2012)
- Countryside Co-op v. Harry A. Koch Co., 280 Neb. 795, 790 N.W.2d 873 (2010)
- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Schafersman v. Agland Coop., 268 Neb. 138, 681 N.W.2d 47 (2004)
- Genetti v. Caterpillar, Inc., 261 Neb. 98, 621 N.W.2d 529 (2001)
- Wilgro, Inc. v. Vowers & Burback, 190 Neb. 369, 208 N.W.2d 698 (1973)
- Pendleton Woolen Mills v. Vending Associates, Inc., 195 Neb. 46, 237 N.W.2d 99 (1975)

- U.S. Bank Nat. Assn. v. Peterson, 284 Neb. 820, 823 N.W.2d 460 (2012)
- Brook Valley Ltd. Part. v. Mutual of Omaha Bank, 285 Neb. 157, 825 N.W.2d 779 (2013)
- Dutton-Lainson Co. v. Continental Ins. Co., 279 Neb. 365, 778 N.W.2d 433 (2010)
- White v. Mazda Motor of America, Inc., 313 Conn. 610, 99 A.3d 1079 (2014)

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