

SUPREME COURT OF WISCONSIN

Megal v. Green Bay Area Visitor & Convention Bureau, Inc., 274 Wis. 2d 162

682 N.W.2d 857 (2004) · No. No. 02-2932 · Decided July 2, 2004

SUMMARY

The Supreme Court of Wisconsin held that Nancy Megal's safe-place claim was properly dismissed because the record lacked evidence establishing constructive notice of the french fry that caused her fall or expert evidence concerning the Arena's required maintenance practices. The court held, however, that failure to establish a safe-place violation does not preclude a common-law negligence claim based on a negligent act. It affirmed in part, reversed in part, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Patience D. Roggensack, J.
JURISDICTION	Wisconsin
DECIDED	July 2, 2004
DOCKET	No. 02-2932
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a published court of appeals decision affirming summary judgment for the defendant and dismissing the plaintiff's safe-place and common-law negligence claims.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, using the same methodology as the circuit court. Summary judgment is proper only when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published and precedential Wisconsin Supreme Court opinion
PARTIES	Nancy Megal v. Green Bay Area Visitor & Convention Bureau, Inc., Valley Forge Insurance Company, Tommy G. Thompson, Secretary of the United States Department of Health and Human Services

TOPICS

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QUESTIONS PRESENTED

1. Whether the undisputed evidence established constructive notice of the french fry sufficient to support a violation of Wisconsin's safe-place statute.
2. Whether a plaintiff may maintain a common-law negligence claim when the plaintiff cannot establish a violation of the higher standard of care imposed by Wisconsin's safe-place statute.
3. What standard governs review of the circuit court's summary judgment decision.

HOLDINGS

1. The Bureau was entitled to summary judgment on Megal's safe-place claim because Megal presented neither evidence of how long the french fry had been on the stair nor expert testimony establishing that the Arena was not as safe as the nature of the enterprise reasonably permitted.
2. A plaintiff may pursue a common-law negligence claim even if the plaintiff cannot prove a violation of Wisconsin's safe-place statute, because the safe-place statute addresses unsafe conditions and imposes a higher standard of care, while common-law negligence addresses negligent acts and imposes an ordinary-care duty.

KEY QUOTATIONS

“These analyses are unsubstantiated and incorrect insofar as they preclude a common-law negligence claim if no violation of the safe-place standard of care is established, and we withdraw them.” (274 Wis. 2d at 180)

“However, the law did not—and does not—release employers from their duty to act with reasonable care, as every other person in this state is required to do.” (274 Wis. 2d at 181)

FACTUAL BACKGROUND

Nancy Megal attended an ice show at the Brown County Veterans Memorial Arena and descended a crowded stairway after the event. Near the bottom of the stairs, she slipped on a ketchup-covered french fry, fracturing her ankle and suffering permanent injury. The Arena allowed patrons to carry purchased concessions throughout the facility, while only two janitors serviced the nearly 61,000-square-foot building and had no formal spill-inspection procedures. Megal could not establish how long the french fry had been on the stair and offered no expert testimony regarding reasonable management and maintenance practices for the facility.

PROCEDURAL HISTORY

Megal sued the Green Bay Area Visitor & Convention Bureau and others after slipping on a ketchup-covered french fry on an Arena stairway. The circuit court initially granted partial summary judgment on the safe-place claim but later granted reconsideration and dismissed the negligence claim as well. The court of appeals

affirmed, and the Wisconsin Supreme Court granted review, affirmed dismissal of the safe-place claim, reversed dismissal of the negligence claim, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the circuit court for further proceedings consistent with the opinion, including allowing Megal to proceed on her common-law negligence claim.

CASES CITED

- Alvarado v. Sersch, 2003 WI 55, ¶ 10, 262 Wis. 2d 74, 662 N.W.2d 350
- Dykstra v. Arthur G. McKee & Co., 92 Wis. 2d 17, 26, 284 N.W.2d 692 (Ct. App. 1979), aff'd, 100 Wis. 2d 120, 301 N.W.2d 201 (1981)
- Gross v. Denow, 61 Wis. 2d 40, 46-47, 212 N.W.2d 2 (1973)
- Strack v. Great Atl. & Pac. Tea Co., 35 Wis. 2d 51, 54-57, 150 N.W.2d 361 (1967)
- Gould v. Allstar Ins. Co., 59 Wis. 2d 355, 362, 208 N.W.2d 388 (1973)
- Fitzgerald v. Badger State Mut. Cas. Co., 67 Wis. 2d 321, 327, 227 N.W.2d 444 (1975)
- Gerdmann v. United States Fire Ins. Co., 119 Wis. 2d 367, 370-72, 350 N.W.2d 730 (Ct. App. 1984)
- Kaufman v. State Street Ltd. P'ship, 187 Wis. 2d 54, 59, 64-65, 522 N.W.2d 249 (Ct. App. 1994)
- May v. Skelley Oil Co., 83 Wis. 2d 30, 36-37, 264 N.W.2d 574 (1978)
- Steinhorst v. H.C. Prange Co., 48 Wis. 2d 679, 683-84, 180 N.W.2d 525 (1970)
- Kujawski v. Arbor View Health Care Ctr., 139 Wis. 2d 455, 463, 407 N.W.2d 249 (1987)
- Moulas v. PBC Prods., Inc., 213 Wis. 2d 406, 417, 570 N.W.2d 739 (Ct. App. 1997)
- Balas v. St. Sebastians Congregation, 66 Wis. 2d 421, 426-27, 225 N.W.2d 428 (1975)
- Merkley v. Schramm, 31 Wis. 2d 134, 142, 142 N.W.2d 173 (1966)
- Lealiou v. Quatsoe, 15 Wis. 2d 128, 136, 112 N.W.2d 193 (1961)
- Rosholt v. Worden-Allen Co., 155 Wis. 168, 172-73, 144 N.W. 650 (1913)
- Gritzner v. Michael R., 2000 WI 68, ¶ 20, 235 Wis. 2d 781, 611 N.W.2d 906
- Krause v. Veterans of Foreign Wars Post No. 6498, 9 Wis. 2d 547, 552, 101 N.W.2d 645 (1960)
- Paluch v. Baldwin Plywood & Veneer Co., 1 Wis. 2d 427, 432-33, 85 N.W.2d 373 (1957)
- Stellmacher v. Wisco Hardware Co., 259 Wis. 310, 314, 48 N.W.2d 492 (1951)
- Morrison v. Steinfort, 254 Wis. 89, 91, 35 N.W.2d 335 (1948)
- Holzworth v. State, 238 Wis. 63, 68, 298 N.W. 163 (1941)
- Carr v. Amusement, Inc., 47 Wis. 2d 368, 374, 177 N.W.2d 388 (1970)
- Vocational, Technical & Adult Educ., Dist. 13 v. DILHR, 76 Wis. 2d 230, 240, 251 N.W.2d 41 (1977)

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