

SUPREME COURT OF NORTH DAKOTA

Rittenour v. Gibson

2003 ND 14 (N.D. 2003) · No. No. 20020053 · Decided February 19, 2003

SUMMARY

The Supreme Court of North Dakota reversed a judgment for the plaintiffs and remanded for a new trial in a premises-liability action arising from injuries caused by a defective floorboard in a mobile-home entry shed. The court held that the jury instructions inadequately addressed the tenant's duty to warn social guests of known dangerous conditions and that the error was not harmless. The court also discussed expert-witness disclosure, photographs, character evidence, and the sufficiency of the damages award.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	SANDSTROM, Justice; Gerald W. Vande Walle, C.J.; Carol Ronning Kapsner, J.; William A. Neumann, J.
JURISDICTION	North Dakota
DECIDED	February 19, 2003
DOCKET	No. 20020053
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed the denial of his motion for a new trial following a jury verdict awarding the plaintiffs damages in a premises-negligence action.
STANDARD OF REVIEW	The denial of a motion for a new trial is reviewed for abuse of discretion, and the appellate court does not reweigh the evidence. Jury-instruction issues are reviewed by determining whether the instruction was erroneous and, if so, whether the error was harmless. Admission or exclusion of expert and other evidence is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Orville Gibson v. Cindy Rittenour, Donald Rittenour

TOPICS

premises liability

duty of care

jury instructions

expert testimony

discovery dispute

PRACTICE AREAS

Torts

Civil procedure

Evidence

Jury instructions

QUESTIONS PRESENTED

1. Whether the district court erred by instructing the jury on the landlord's duty to warn without also instructing on the tenant's duty to warn a social guest of a known dangerous condition.
2. Whether the instructional error was harmless under N.D.R.Civ.P. 61.
3. Whether the district court abused its discretion in admitting Dr. Williams's expert testimony despite allegedly incomplete and untimely expert disclosures.
4. Whether the district court abused its discretion by excluding photographs of areas unrelated to the accident scene.
5. Whether the district court abused its discretion by excluding Gibson's character witness.
6. Whether the evidence was sufficient to support the jury's damages award.

HOLDINGS

1. A tenant who knows or has reason to know of a dangerous condition on leased premises has a duty to warn a social guest entering the premises, and the jury must be instructed on that duty when tenant liability is an issue.
2. The instructional error was not harmless because tenant liability was central to the case and the erroneous or incomplete instructions could have affected the jury's allocation of fault.
3. Parties must fully, completely, and fairly disclose the subject matter and substance of an expert's anticipated testimony; however, because the judgment was already being reversed for instructional error, the court did not decide whether the disclosure failure independently justified a new trial.
4. The district court did not abuse its discretion in excluding photographs of the bedroom and bathroom because they were unrelated to the accident scene and their exclusion did not affect Gibson's substantial rights.
5. The district court properly excluded Gibson's character witness because Gibson's character was not placed directly in issue and was not used in a manner permitting rebuttal character evidence under N.D.R.Ev. 405(a).
6. The district court did not abuse its discretion in declining to disturb the jury's award of future economic and noneconomic damages.

KEY QUOTATIONS

“Under North Dakota law, a tenant has a duty to warn if the tenant knows of a dangerous condition.” (656 N.W.2d at 697-698)

“All questions of fact having any bearing on negligence should have been submitted to the jury, and the jury should have been given the correct law to apply.” (656 N.W.2d at 698)

“We cannot conclude the error was harmless.” (656 N.W.2d at 699)

“Parties must fully, completely, and fairly disclose the subject matter on which their expert witnesses will testify at trial and the substance of their expert witnesses' testimony.” (656 N.W.2d at 700)

FACTUAL BACKGROUND

Orville Gibson owned a mobile home rented by Cheryl Lynn Jackson and her sister. Cindy Rittenour, a social guest of the Jacksons, was injured when her leg broke through a defective floorboard in the entry shed. Jackson knew of the defect and had asked Gibson to repair it, while Gibson testified that he did not know about the defect. The jury apportioned fault among Gibson, Rittenour, Jackson, and others and awarded damages for past and future economic and noneconomic losses.

PROCEDURAL HISTORY

The jury awarded the Rittenours \$408,068.05 and allocated 35% fault to Gibson, 25% to Cindy Rittenour, 30% to tenant Cheryl Lynn Jackson, and 10% to others. Judgment was entered against Gibson for \$144,883.81. The district court denied Gibson's motion for a new trial, and Gibson appealed. The Supreme Court of North Dakota reversed and remanded for a new trial because the jury instructions did not adequately address a tenant's duty to warn of known dangerous conditions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment is reversed and the case is remanded for a new trial.

CASES CITED

- Perry v. Reinke, 1997 ND 213, ¶¶ 21-22, 570 N.W.2d 224
- Okken v. Okken, 325 N.W.2d 264, 269 (N.D. 1982)
- Olmstead v. First Interstate Bank, 449 N.W.2d 804, 807 (N.D. 1989)
- State v. Olander, 1998 ND 50, ¶ 18, 575 N.W.2d 658
- State v. Smaage, 547 N.W.2d 916, 921 (N.D. 1996)
- State v. Huber, 555 N.W.2d 791, 793 (N.D. 1996)
- Interest of B.G., 477 N.W.2d 819, 822 (N.D. 1991)
- Francis v. Pic, 226 N.W.2d 654, 655-57 (N.D. 1975)
- Bellemare v. Gateway Builders, Inc., 420 N.W.2d 733, 741 (N.D. 1988)
- Jacobs v. Anderson Bldg. Co., 459 N.W.2d 384, 386 (N.D. 1990)

- Beilke v. Coryell, 524 N.W.2d 607, 609 (N.D. 1994)
- Botnen v. Lukens, 1998 ND 224, ¶ 12, 587 N.W.2d 141
- Myer v. Rygg, 2001 ND 123, ¶¶ 6, 8, 630 N.W.2d 62
- Wolf v. Estate of Seright, 1997 ND 240, ¶ 17, 573 N.W.2d 161
- Brandt v. Milbrath, 2002 ND 117, ¶ 13, 647 N.W.2d 674
- First National Bank & Trust Co. v. Brakken, 468 N.W.2d 633, 636 (N.D. 1991)
- State v. Gagnon, 1999 ND 13, ¶¶ 9, 13, 589 N.W.2d 560
- State v. Clark, 1997 ND 199, ¶ 26, 570 N.W.2d 195
- State v. McIntyre, 488 N.W.2d 612, 617 (N.D. 1992)
- Anderson v. Jacobson, 2001 ND 40, ¶ 6, 622 N.W.2d 730
- Fontes v. Dixon, 544 N.W.2d 869, 871 (N.D. 1996)
- Usry v. Theusch, 521 N.W.2d 918, 919 (N.D. 1994)
- McCommon v. Hennings, 283 N.W.2d 166, 169 (N.D. 1979)