

SUPREME COURT OF NORTH DAKOTA

Ficek v. Morken

685 N.W.2d 98 (N.D. 2004) · No. No. 20030295 · Decided August 4, 2004

SUMMARY

The Supreme Court of North Dakota affirmed a judgment imposing liability on the City of Fargo for negligent inspection and approval of residential construction. The court declined to adopt the public duty doctrine, holding that it was incompatible with North Dakota law, and concluded that the jury was properly instructed that the City owed a duty to properly inspect the residence and enforce applicable building codes.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice
JURISDICTION	North Dakota
DECIDED	August 4, 2004
DOCKET	No. 20030295
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City of Fargo appealed from a judgment entered on a jury verdict holding the City and the Morkens liable for damages arising from negligent construction and inspection of the Ficeks' residence. The appeal challenged the jury instruction concerning the City's duty to inspect construction and enforce building codes.
STANDARD OF REVIEW	Jury instructions are reviewed as a whole to determine whether they correctly and adequately inform the jury of the applicable law and fairly advise the jury on the essential issues without misleading or confusing it.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of North Dakota.
PARTIES	The City of Fargo v. Gary A. Ficek, Rhonda K. Ficek

TOPICS

- municipal liability
- construction law
- negligence
- appellate procedure
- standard of review

PRACTICE AREAS

torts

municipal law

construction law

appellate procedure

QUESTIONS PRESENTED

1. Whether North Dakota should adopt the public duty doctrine to eliminate a municipality's tort duty to individual plaintiffs for building-code inspections absent a special relationship.
2. Whether the district court correctly instructed the jury that the City of Fargo owed the Ficeks a duty to properly inspect the residence's construction and enforce applicable building codes.

HOLDINGS

1. North Dakota does not adopt the public duty doctrine because it is incompatible with North Dakota law and the Political Subdivision Tort Claims Act.
2. The district court correctly instructed the jury that the City owed the Ficeks and other purchasers a duty to properly inspect construction and enforce the building codes in force when the residence was constructed.

KEY QUOTATIONS

"We are persuaded by the reasoning of the minority view and refuse to adopt the public duty doctrine as a part of North Dakota law." (¶ 28, 685 N.W.2d at 107)

"We conclude the public duty doctrine is incompatible with North Dakota law and we refuse to adopt it." (¶ 31, 685 N.W.2d at 108)

"We conclude the challenged jury instruction correctly and adequately informed the jury of the applicable law." (¶ 31, 685 N.W.2d at 108)

FACTUAL BACKGROUND

The Morkens constructed a two-story addition to their Fargo home between 1988 and 1990, and City inspectors inspected the construction more than 40 times before issuing a certificate of occupancy. After purchasing the home in 1996, the Ficeks discovered numerous code violations and structural defects, including inadequate foundation footings, construction on uncontrolled fill, overloaded structural supports, deficient flashing and vapor barriers, and defective gas piping. In 2002, a structural engineer advised the Ficeks to repair the foundation immediately or vacate the residence.

PROCEDURAL HISTORY

The Ficeks sued the Morkens and the City of Fargo, asserting negligence and other claims against the Morkens and negligent inspection against the City. The jury found the Morkens and the City each 50 percent at fault and awarded \$214,000 in damages; judgment was entered against the City for \$133,821.89, including costs and disbursements. The City appealed, and the Supreme Court of North Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- Nesvig v. Nesvig, 2004 ND 37, 676 N.W.2d 73
- Rittenour v. Gibson, 2003 ND 14, 656 N.W.2d 691
- Groleau v. Bjornson Oil Co., Inc., 2004 ND 55, 676 N.W.2d 763
- Grewal v. North Dakota Ass'n of Counties, 2003 ND 156, 670 N.W.2d 336
- Iglehart v. Iglehart, 2003 ND 154, 670 N.W.2d 343
- Diegel v. City of West Fargo, 546 N.W.2d 367 (N.D. 1996)
- Tom Beuchler Constr., Inc. v. City of Williston, 392 N.W.2d 403 (N.D. 1986)
- Tom Beuchler Constr., Inc. v. City of Williston, 413 N.W.2d 336 (N.D. 1987)
- Myers v. Moore Eng'g, Inc., 42 F.3d 452 (8th Cir. 1994)
- J & B Dev. Co. v. King County, 100 Wash. 2d 299, 669 P.2d 468 (1983)
- Taylor v. Stevens County, 111 Wash. 2d 159, 759 P.2d 447 (1988)
- Kitto v. Minot Park Dist., 224 N.W.2d 795 (N.D. 1974)
- Binstock v. Fort Yates Pub. Sch. Dist., 463 N.W.2d 837 (N.D. 1990)
- Nelson v. Gillette, 1997 ND 205, 571 N.W.2d 332
- Rodenburg v. Fargo-Moorhead YMCA, 2001 ND 139, 632 N.W.2d 407
- Stokka v. Cass County Elec. Coop., Inc., 373 N.W.2d 911 (N.D. 1985)
- Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943)
- Haff v. Hettich, 1999 ND 94, 593 N.W.2d 383
- Martin v. Allianz Life Ins. Co., 1998 ND 8, 573 N.W.2d 383
- Fast v. State, 2004 ND 111, 680 N.W.2d 265
- Olson v. Bismarck Parks & Recreation Dist., 2002 ND 61, 642 N.W.2d 864
- Hovland v. City of Grand Forks, 1997 ND 95, 563 N.W.2d 384
- South v. Maryland, 59 U.S. (18 How.) 396, 15 L. Ed. 433 (1855)
- Leake v. Cain, 720 P.2d 152 (Colo. 1986)
- Gordon v. Bridgeport Hous. Auth., 208 Conn. 161, 544 A.2d 1185 (1988)
- Muthukumarana v. Montgomery County, 370 Md. 447, 805 A.2d 372 (2002)
- Massee v. Thompson, 321 Mont. 210, 90 P.3d 394 (2004)
- Jean W. v. Commonwealth, 414 Mass. 496, 610 N.E.2d 305 (1993)
- Adams v. State, 555 P.2d 235 (Alaska 1976)
- Wallace v. Ohio Department of Commerce, 96 Ohio St. 3d 266, 773 N.E.2d 1018 (2002)
- Natrona County v. Blake, 81 P.3d 948 (Wyo. 2003)