

SUPREME COURT OF MONTANA

Patch v. Hillerich & Bradsby Co.

2011 MT 175 (Mont. 2011) · No. DA 10-0051 · Decided July 21, 2011

SUMMARY

The Supreme Court of Montana affirmed an \$850,000 jury verdict against Hillerich & Bradsby Co. in a strict products liability action arising from the death of Brandon Patch after he was struck by a batted ball hit with the company's CB-13 aluminum baseball bat. The court held that bystanders or other players may pursue failure-to-warn claims, that causation could be established under a flexible standard of proof, and that the assumption-of-risk defense was properly excluded. The court also upheld the jury instructions and denied the request for a new trial.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Michael E. Wheat; Mike McGrath; James C. Nelson; Patricia Cotter; Beth Baker; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	July 21, 2011
DOCKET	DA 10-0051
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hillerich & Bradsby appealed after a jury returned an \$850,000 verdict against it on the plaintiffs' strict-products-liability failure-to-warn claim. The appeal challenged the denial of summary judgment and judgment as a matter of law, exclusion of the assumption-of-risk defense, jury instructions, and denial of a new trial.
STANDARD OF REVIEW	Summary judgment and judgment as a matter of law are reviewed de novo. Orders granting or denying motions in limine and decisions regarding jury instructions are reviewed for abuse of discretion. A challenged jury instruction requires a showing of prejudice; an error is harmless when it does not affect substantial rights.
PRECEDENTIAL VALUE	published Montana Supreme Court opinion; precedential
PARTIES	Hillerich & Bradsby Co., d/b/a Louisville Slugger v. Debbie Patch, as Personal Representative of the Estate of Brandon Patch, Deceased, Debbie Patch, Duane Patch

TOPICS

products liability

wrongful death

summary judgment

assumption of risk

appellate procedure

PRACTICE AREAS

products liability

personal injury

wrongful death

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court properly denied summary judgment on the plaintiffs' failure-to-warn claim on the ground that Brandon, a bystander or nonpurchasing player, could assert the claim.
2. Whether the district court properly denied Hillerich & Bradsby's Rule 50(b) motion for judgment as a matter of law where the plaintiffs relied on flexible proof of causation and an inference that Brandon would have heeded a warning.
3. Whether the district court properly excluded Hillerich & Bradsby's assumption-of-risk defense.
4. Whether the jury instructions correctly stated Montana law and whether any inconsistency between the instructions and verdict form prejudiced Hillerich & Bradsby.
5. Whether the verdict should be set aside and a new trial granted.

HOLDINGS

1. Under Montana strict-products-liability law, a person exposed to the risks of a product may bring a failure-to-warn claim even if that person did not purchase or physically hold the product. In the context of baseball, all players, including Brandon, were users or consumers placed at risk by the bat's increased exit speed.
2. Summary judgment was properly denied because genuine issues of material fact existed concerning the scope and feasibility of an adequate warning, and the workability of providing warnings to persons foreseeably exposed to the product's risks was a jury question.
3. The district court properly denied judgment as a matter of law because Montana applies a flexible standard of proof in products-liability cases, and a plaintiff need not rely exclusively on direct testimony that a warning would have altered the decedent's conduct. The jury could infer that a warning would have been heeded where the victim was deceased and the consequences were severe.
4. The assumption-of-risk defense was properly excluded because it does not apply as a matter of law without evidence that the victim subjectively knew he would suffer serious injury or death, knew of the specific danger, and voluntarily exposed himself to it.
5. The jury instructions correctly stated the applicable law, and any inconsistency between the instruction referring to a bystander and the verdict form referring to an ordinary user was harmless because Hillerich & Bradsby failed to show prejudice.

KEY QUOTATIONS

"In this context, all of the players, including Brandon, were users or consumers placed at risk by the

increased exit speed caused by H & B's bat." (257 P.3d at 388)

"The nature and quality of evidence used in products liability cases to demonstrate causation varies, and the death or inability of the plaintiff to testify is one of the factors influencing the requisite standard of proof." (257 P.3d at 389)

"In certain situations . . . where the consequences . . . are severe, the lack of warning is undisputed, and the person . . . is dead, the jury may be permitted to infer that a warning would have been heeded and that the failure to warn was a proximate cause of the injury." (257 P.3d at 390)

"Because the law gives to the jury the duty of determining whether the plaintiff presented a viable theory of warning and causation in this case involving a baseball bat, I defer to the jury's judgment and likewise affirm their verdict." (257 P.3d at 392)

FACTUAL BACKGROUND

On July 25, 2003, eighteen-year-old Brandon Patch was pitching in an American Legion baseball game when a batted ball struck him in the head. The ball had been hit with Hillerich & Bradsby's CB-13 aluminum bat, which the plaintiffs alleged increased batted-ball velocity and reduced fielders' reaction time; Brandon died from his injuries. The jury found the bat was not defectively designed but was defective because Hillerich & Bradsby failed to warn of the enhanced risks associated with its use.

PROCEDURAL HISTORY

The plaintiffs sued Hillerich & Bradsby in the First Judicial District Court for manufacturing defect, design defect, and failure to warn. The district court granted summary judgment on manufacturing defect but denied it on design defect and failure to warn, excluded the assumption-of-risk defense, and submitted the remaining claims to the jury. The jury rejected the design-defect claim but found a failure to warn and awarded \$850,000; the district court denied Hillerich & Bradsby's Rule 50(b) motion for judgment as a matter of law.

DISPOSITION

affirmed

CASES CITED

- Wood v. Old Trapper Taxi, 286 Mont. 18, 952 P.2d 1375 (1997)
- Johnson v. Costco Wholesale, 2007 MT 43, 336 Mont. 105, 152 P.3d 727
- Malcolm v. Evenflo Co., 2009 MT 285, 352 Mont. 325, 217 P.3d 514
- Goles v. Neumann, 2011 MT 11, 359 Mont. 132, 247 P.3d 1089
- Brandenburger v. Toyota Motor Sales, 162 Mont. 506, 513 P.2d 268 (1973)
- Streich v. Hilton-Davis, 214 Mont. 44, 692 P.2d 440 (1984)
- Hagen v. Dow Chem. Co., 261 Mont. 487, 863 P.2d 413 (1993)
- Macrie v. SDS Biotech Corp., 630 A.2d 805 (N.J. Super. App. Div. 1993)
- Davis v. Wyeth Laboratories, Inc., 399 F.2d 121 (9th Cir. 1968)

- Riley v. American Honda Motor Co., 259 Mont. 128, 856 P.2d 196 (1993)
- Emery v. Federated Foods, Inc., 262 Mont. 83, 863 P.2d 426 (1993)
- Schutte v. Celotex Corp., 196 Mich. App. 135, 492 N.W.2d 773 (1992)
- Lutz v. National Crane Corp., 267 Mont. 368, 884 P.2d 455 (1994)
- Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904
- McAlpine v. Rhone-Poulenc Ag Co., 2000 MT 383, 304 Mont. 31, 16 P.3d 1054
- State v. Schmidt, 2009 MT 450, 354 Mont. 280, 224 P.3d 618
- Cromer v. Sherwin-Williams Co., 2006 WL 1889252, 2006 U.S. Dist. LEXIS 46284 (D.S.C. July 7, 2006)

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