

SUPREME COURT OF VERMONT

Knappmiller v. Bove

191 Vt. 629 (2012) · Decided May 16, 2012

SUMMARY

The Vermont Supreme Court affirmed the denial of attorney's fees and litigation costs sought by a tree-service contractor under implied indemnification. The court held that an award under Vermont's Albright exception requires evidence of underlying culpability, and that the jury's finding of no liability and no wrongful conduct did not support indemnification.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	May 16, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Vaillancourt appealed the trial court's denial of its post-trial motion seeking attorney's fees and litigation costs from the Boves under a theory of implied indemnification.
STANDARD OF REVIEW	Awards of attorney's fees are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Vaillancourt Tree-Landscape Service v. Joseph Bove, Carolyn Bove

TOPICS

remedies appellate procedure negligence breach of contract

PRACTICE AREAS

remedies torts contracts appellate procedure

QUESTIONS PRESENTED

1. Whether attorney's fees and litigation expenses may be awarded under Vermont's implied-indemnity exception when the jury found the putative indemnitor neither liable nor responsible for a wrongful act in the underlying action.

2. Whether Windsor School District v. State eliminated the requirement that some underlying culpability or wrongful act be shown before attorney's fees may be awarded under the implied-indemnity exception.

HOLDINGS

1. Attorney's fees and litigation expenses are not available under Vermont's implied-indemnity exception absent evidence of some underlying culpability or wrongful act by the putative indemnitor. Because the jury found neither the Boves nor Vaillancourt liable for wrongful cutting, the trial court properly denied Vaillancourt's fee request.
2. Windsor did not abandon the wrongful-act or underlying-culpability requirement for common-law implied indemnity; it addressed a distinct strict-liability setting and does not extend to a case in which the jury specifically found no fault, liability, or underlying responsibility.

KEY QUOTATIONS

“Some underlying culpability must appear from the record before attorney’s fees can be awarded under the Albright exception.” (¶ 5)

“Contrary to Vaillancourt’s contention, Windsor does not abandon the wrongful act element, but merely explains the rationale behind prior case law and notes that a finding of fault is not a necessary predicate to an award of attorney’s fees in the context of that case with its distinct premise of strict liability.” (¶ 8)

FACTUAL BACKGROUND

Knappmiller owned commercial property adjoining property owned by the Boves, who hired Vaillancourt to remove a row of white cedar trees allegedly straddling the property line. Knappmiller claimed the trees were on his property and had been removed without his consent. Vaillancourt asserted that the Boves should have informed it of the ownership dispute and sought indemnity for any liability and resulting litigation expenses.

PROCEDURAL HISTORY

Knappmiller sued Joseph and Carolyn Bove for allegedly wrongful cutting and removal of trees, later adding Vaillancourt Tree-Landscape Service as a codefendant. Vaillancourt cross-claimed against the Boves for negligence, breach of contract, and indemnity. After a jury found neither the Boves nor Vaillancourt liable, the trial court denied Vaillancourt's post-trial request for attorney's fees and costs, and Vaillancourt appealed.

DISPOSITION

affirmed

CASES CITED

- Spooner v. Town of Topsham, 2010 VT 71, ¶ 7, 188 Vt. 293, 9 A.3d 672
- Windsor School District v. State, 2008 VT 27, 183 Vt. 452, 956 A.2d 528
- Concord Gen. Mut. Ins. Co. v. Woods, 2003 VT 33, ¶ 18, 175 Vt. 212, 824 A.2d 572
- Albright v. Fish, 138 Vt. 585, 591, 422 A.2d 250, 254 (1980)

- *Blanchard v. Villeneuve*, 142 Vt. 267, 271-72, 454 A.2d 1235, 1237-38 (1982)
- *Bull v. Pinkham Eng'g Assocs.*, 170 Vt. 450, 460-61, 752 A.2d 26, 34 (2000)
- *White v. Quechee Lakes Landowners' Ass'n*, 170 Vt. 25, 31, 742 A.2d 734, 738 (1999)
- *Welch v. LaGue*, 141 Vt. 644, 647, 451 A.2d 1133, 1135 (1982)

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