

NEBRASKA SUPREME COURT

Pantano v. American Blue Ribbon Holdings

303 Neb. 156 (2019) · No. No. S-18-815 · Decided May 17, 2019

SUMMARY

The Nebraska Supreme Court reviewed a premises-liability judgment arising from Arlene Pantano’s fall at a Village Inn restaurant. The court held that statements describing the fall were admissible as excited utterances and that an instruction cured the improper admission of evidence concerning payment of medical expenses. On cross-appeal, the court held there was no evidence supporting Arlene’s comparative negligence and modified the judgment from \$195,000 to \$260,000.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 17, 2019
DOCKET	No. S-18-815
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by American Blue Ribbon Holdings from a jury verdict and judgment in a negligence action, with a cross-appeal by the estates concerning comparative negligence.
STANDARD OF REVIEW	The court reviews a jury verdict by considering the evidence and resolving evidentiary conflicts in favor of the successful party; the verdict will not be set aside unless clearly wrong and is sufficient if supported by competent evidence. For hearsay rulings, factual findings are reviewed for clear error and the ultimate admissibility determination is reviewed de novo, except for rulings under the residual hearsay exception.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	American Blue Ribbon Holdings, LLC, doing business as Village Inn v. Ross A. Pantano and Karyl L. Einerson, as copersonal representatives of the Estates of Arlene L. Pantano and Anthony R.

TOPICS

hearsay comparative fault negligence preservation of error summary judgment

PRACTICE AREAS

negligence evidence appellate procedure civil procedure remedies

QUESTIONS PRESENTED

1. Whether statements Arlene made shortly after her fall were admissible under the excited-utterance exception to the hearsay rule.
2. Whether evidence that a Village Inn employee offered to pay Arlene's medical bills, together with evidence that the bills were not paid, required reversal despite a limiting jury instruction.
3. Whether the evidence supported the jury's finding that American Blue Ribbon was negligent and the denial of its motions for directed verdict, judgment notwithstanding the verdict, and new trial.
4. Whether American Blue Ribbon preserved its challenges to the denial of its motions in limine.
5. Whether the denial of American Blue Ribbon's motion for summary judgment was reviewable on appeal.
6. Whether the evidence supported submitting comparative negligence to the jury and reducing the estates' judgment by 25 percent.

HOLDINGS

1. The statements were admissible under the excited-utterance exception because the fall was a startling event, the statements related to the event, and Arlene made them while still under the stress of the event.
2. Although testimony that a Village Inn employee said Arlene's medical expenses would be paid was admitted contrary to the statute governing offers to pay medical expenses, any error was cured by the jury instruction explaining that American Blue Ribbon had no duty to pay the expenses unless and until negligence or breach of duty was determined.
3. The evidence was sufficient to support the jury's finding that American Blue Ribbon was negligent, so the denials of the motions for directed verdict, judgment notwithstanding the verdict, and new trial were proper.
4. American Blue Ribbon failed to preserve its evidentiary challenges because it did not object when the challenged evidence was offered at trial.
5. The denial of a motion for summary judgment was not a final order reviewable on appeal.
6. The district court erred in instructing the jury on comparative negligence and in providing a verdict form allowing a reduction for Arlene's negligence because American Blue Ribbon presented no evidence that Arlene was negligent.

KEY QUOTATIONS

“The true test is not when the exclamation was made but whether, under all the circumstances, the declarant was still speaking under the stress of nervous excitement and shock caused by the event.” (161)

“The denial of a motion for summary judgment is not a final order reviewable on appeal” (165)

“Establishing that an accident has occurred does not prove a case of negligence.” (166)

“Negligence is not presumed and must be proved by evidence, direct or circumstantial.” (166)

FACTUAL BACKGROUND

Arlene Pantano fell near the entrance of a Village Inn restaurant owned by American Blue Ribbon Holdings after tripping on an entryway rug, suffering a fractured hip. Shortly after the fall, while upset, crying, and in obvious pain, she told her children that she had tripped on the rug; one child described the rug as buckled. The jury found American Blue Ribbon liable and awarded damages, but also found Arlene 25 percent negligent based on comparative negligence.

PROCEDURAL HISTORY

Arlene and Anthony Pantano sued American Blue Ribbon after Arlene fell on an entryway rug at a Village Inn restaurant. After both plaintiffs died, the action was revived in the names of the copersonal representatives of their estates. Following a jury trial, the jury awarded \$245,000 to Arlene's estate and \$15,000 to Anthony's estate, but found Arlene 25 percent negligent; the district court entered judgment for \$195,000. The Nebraska Supreme Court affirmed the judgment as modified, eliminating the 25-percent comparative-negligence reduction and increasing the judgment to \$260,000.

DISPOSITION

affirmed

CASES CITED

- Jacobs Engr. Group v. ConAgra Foods, 301 Neb. 38, 917 N.W.2d 435 (2018)
- TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2017)
- State v. Nolt, 298 Neb. 910, 906 N.W.2d 309 (2018)
- Olson v. City of Omaha, 232 Neb. 428, 441 N.W.2d 149 (1989)
- McCune v. Neitzel, 235 Neb. 754, 457 N.W.2d 803 (1990)
- Molt v. Lindsay Mfg. Co., 248 Neb. 81, 532 N.W.2d 11 (1995)
- Doe v. Zedek, 255 Neb. 963, 587 N.W.2d 885 (1999)
- Burns v. Veterans of Foreign Wars, 231 Neb. 844, 438 N.W.2d 485 (1989)