

SUPREME COURT OF SOUTH DAKOTA

Cameron v. Osler

930 N.W.2d 661 (S.D. 2019) · Decided June 19, 2019

SUMMARY

The South Dakota Supreme Court held that a plaintiff may pursue a vicarious-liability claim against an employer even after the employee has been dismissed from the action as a result of untimely service or an expired statute of limitations. The dismissal was procedural and did not adjudicate the employee's culpability or constitute a release. The court reversed the circuit court's dismissal of the claim against Waste Connections.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	WILBUR, Retired Justice
JURISDICTION	South Dakota
DECIDED	June 19, 2019
DISPOSITION	reversed
PROCEDURAL POSTURE	Cameron appealed from the circuit court's dismissal of her vicarious-liability claim against Waste Connections after the court concluded that the untimely service and dismissal of employee Jason Osler precluded the claim against his employer.
STANDARD OF REVIEW	The court reviewed de novo whether the circuit court erred in granting the motion to dismiss.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Kimberlynn Cameron v. Waste Connections of South Dakota, Inc.

TOPICS

vicarious liability

statute of limitations

motions to dismiss

service of process

civil procedure

PRACTICE AREAS

civil procedure

torts

QUESTIONS PRESENTED

1. Whether a plaintiff may maintain a vicarious-liability action against an employer when the employee has been dismissed because the statute of limitations expired or service was untimely, without an adjudication of the employee's culpability.
2. Whether the dismissal of Osler precluded Cameron from proceeding against Waste Connections under respondeat superior.

HOLDINGS

1. A purely procedural dismissal of the employee that does not adjudicate the employee's culpability does not automatically eliminate a timely vicarious-liability claim against the employer.

KEY QUOTATIONS

“It is the negligence of the servant that is imputed to the master, not the liability.” (930 N.W.2d at 666)

“The dismissal did not examine or determine Osler's culpability, and there has been no release of Cameron's claim or an exchange of value.” (930 N.W.2d at 667)

FACTUAL BACKGROUND

Kimberlynn Cameron was injured in a September 23, 2014 automobile accident involving Jason Osler, who was driving a vehicle owned by his employer, Waste Connections of South Dakota, Inc. Cameron filed suit against Osler and later amended her pleading shortly before the statute of limitations expired to add Waste Connections and a vicarious-liability claim based on Osler's alleged negligence. Cameron timely served Waste Connections but failed to timely serve Osler, whose claims were dismissed without an adjudication of his alleged negligence.

PROCEDURAL HISTORY

Cameron initially sued Osler for injuries arising from an automobile accident. Before the statute of limitations expired, she amended the summons and complaint to add Waste Connections and a vicarious-liability claim, timely serving Waste Connections but not Osler. Osler was dismissed after Cameron failed to timely serve him, and the circuit court granted Waste Connections' motion to dismiss. The South Dakota Supreme Court reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The dismissal of Cameron's suit against Waste Connections was reversed; the opinion does not state additional specific remand instructions.

CASES CITED

- *Wojewski v. Rapid City Reg'l Hosp. Inc.*, 2007 S.D. 33, ¶ 11, 730 N.W.2d 626, 631
- *Kirlin v. Halverson*, 2008 S.D. 107, ¶ 12, 758 N.W.2d 436, 444
- *Estate of Williams v. Vandeberg*, 2000 S.D. 155, ¶ 12, 620 N.W.2d 187, 190

- Krekelberg v. City of Minneapolis, No. CIV. 13-3562, 2018 WL 3621031, at *3, *5 (D. Minn. July 30, 2018)
- Leow v. A & B Freight Line, Inc., 175 Ill. 2d 176, 222 Ill. Dec. 80, 676 N.E.2d 1284, 1288 (1997)
- Brosamle v. Mapco Gas Products, Inc., 427 N.W.2d 473, 475-76 (Iowa 1988)
- Cohen v. Alliant Enters., Inc., 60 S.W.3d 536, 538-39 (Ky. 2001)
- Verrastro v. Bayhospitalists, LLC, 208 A.3d 720, 725, 728-29 (Del. 2019)
- Greco v. Univ. of Delaware, 619 A.2d 900 (Del. 1993)
- Hughes v. Doe, 273 Va. 45, 639 S.E.2d 302, 304 (2007)
- Women First OB/GYN Assoc. LLC v. Harris, 232 Md. App. 647, 161 A.3d 28, 39-46 (2017)
- Stephens v. Petrino, 350 Ark. 268, 86 S.W.3d 836, 843 (2002)
- Hartford Ins. Co. v. Mullinax, 336 Ark. 335, 984 S.W.2d 812, 816 (1999)
- Al-Shimmari v. Detroit Med. Ctr., 477 Mich. 280, 731 N.W.2d 29, 36-37 (2007)
- Law v. Verde Valley Med. Ctr., 217 Ariz. 92, 170 P.3d 701, 705 (App. 2007)
- Karaduman v. Newsday, Inc., 51 N.Y.2d 531, 435 N.Y.S.2d 556, 416 N.E.2d 557, 546 (1980)
- Buettner v. Cellular One, Inc., 700 So. 2d 48, 48 (Fla. Dist. Ct. App. 1997)
- Bass v. Happy Rest, Inc., 507 N.W.2d 317, 320 (S.D. 1993)
- Kocsis v. Harrison, 249 Neb. 274, 543 N.W.2d 164, 169 (1996)
- Melichar v. Frank, 78 S.D. 58, 62, 98 N.W.2d 345, 347 (1959)