

SUPREME COURT OF NEBRASKA

Sinsel v. Olsen, 279 Neb. 38

777 N.W.2d 54 (2009) · No. S-09-003 · Decided December 24, 2009

SUMMARY

The Supreme Court of Nebraska addressed claims arising from a minor's negligent throwing of fireworks that injured another child and the minor's mother's alleged negligent supervision. The court held that the evidence did not establish that the injury was reasonably foreseeable to the mother, reversed and vacated the judgment against her, and held that the jury had been improperly instructed regarding allocation of noneconomic damages. The court remanded for further proceedings concerning the judgment against the minor, including a possible remittitur or a limited new trial.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	December 24, 2009
DOCKET	S-09-003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Olsen and Jacob appealed judgments entered after a jury awarded damages against Jacob for negligence and against Olsen for negligent supervision. Sinsel cross-appealed the assessment of prejudgment interest.
STANDARD OF REVIEW	A directed verdict is proper at the close of all the evidence when reasonable minds cannot differ and can draw only one conclusion from the evidence. The correctness of a jury instruction is reviewed as a question of law independently by the appellate court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Linda Olsen, parent and next friend of Jacob Olsen, a minor child, Jacob Olsen v. Virginia Sinsel, mother and next friend of Heidi Sinsel, a minor child

TOPICS

negligent supervision

duty of care

appellate procedure

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PRACTICE AREAS

torts

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QUESTIONS PRESENTED

1. Whether the evidence was legally insufficient to establish Linda Olsen's negligent supervision of Jacob.
2. Whether the jury should have been instructed to determine total noneconomic damages and allocate fault between Jacob and Olsen in proportion to each defendant's negligence.
3. Whether Jacob's \$50,000 damages award was excessive and what remedy was appropriate after reversal of the judgment against Olsen.
4. Whether the prejudgment-interest award should stand.

HOLDINGS

1. A parent is not liable for negligent supervision absent evidence that the parent knew or should have known that the child had a dangerous, habitual propensity making the particular injury-producing conduct imminently foreseeable. Jacob's prior rebellious and careless conduct did not establish that propensity or make his negligent throwing of fireworks at Heidi foreseeable.
2. In a case involving multiple defendants who did not act as part of a common enterprise or plan, Nebraska law requires the fact finder to determine the plaintiff's total noneconomic damages and allocate those damages among defendants in direct proportion to each defendant's percentage of negligence, with separate judgments against each defendant.
3. The record established that Heidi's damages were at least \$50,000, and that amount was not excessive. Sinsel was entitled to accept a remittitur of all amounts above \$50,000; otherwise, the district court was required to conduct a new trial limited to the nature, extent, and amount of damages caused by Jacob's negligence.
4. The prejudgment-interest award was vacated, and the court did not reach the cross-appeal issues concerning prejudgment interest because Sinsel had not obtained a judgment exceeding her pretrial settlement offer for purposes of Neb. Rev. Stat. § 45-103.02.

KEY QUOTATIONS

"We held that parents can be liable for failing to exercise reasonable care to prevent injury to others only when their child has a dangerous habit of causing harm to others and the parents know of the child's 'habitual, dangerous propensity.'" (58)

"We hold that Olsen did not have a duty to confine him to the house to prevent an unforeseeable act." (59)

"This provision contemplates a process by which the finder of fact determines the total noneconomic damages suffered by the plaintiff as the result of injuries proximately caused by the negligence of multiple defendants;

then, it allocates a portion of the total to each defendant "in direct proportion to that defendant's percentage of negligence."" (60)

FACTUAL BACKGROUND

On July 4, 2005, fifteen-year-old Jacob Olsen threw fireworks toward a group of teenagers, and particles struck and burned Heidi Sinsel, leaving a small scar. Jacob's mother, Linda Olsen, was not present and did not know before the incident that Jacob had obtained fireworks or had recently thrown fireworks from a vehicle. Evidence of Jacob's prior conduct included rebellious behavior, a school parking-lot accident, a physical altercation with his mother, a pocketknife incident, and a fireworks-related warning about a week before the injury that Olsen did not know about at the time.

PROCEDURAL HISTORY

The district court granted Sinsel partial summary judgment, finding Jacob negligent as a matter of law, but denied the defendants' summary-judgment motions. It overruled Olsen's motion for a directed verdict on negligent supervision, submitted separate verdict forms to the jury, and entered awards of \$50,000 against Jacob and \$75,000 against Olsen. The Nebraska Supreme Court reversed and vacated the judgment against Olsen, vacated the prejudgment-interest award, and remanded the claim against Jacob for a remittitur election or a limited new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment against Olsen and the prejudgment-interest award are vacated. Sinsel must have 10 days after the mandate is spread in the district court to accept a remittitur of all amounts above \$50,000. If she accepts, the judgment draws interest from the date of acceptance. If she declines, the district court must conduct a new trial limited to the nature, extent, and amount of Heidi's damages caused by Jacob's negligence.

CASES CITED

- Aon Consulting v. Midlands Fin. Benefits, 275 Neb. 642, 748 N.W.2d 626 (2008)
- Karel v. Nebraska Health Sys., 274 Neb. 175, 738 N.W.2d 831 (2007)
- Pople v. Rose, 254 Neb. 1, 573 N.W.2d 765 (1998)
- Norton v. Payne, 154 Wash. 241, 281 P. 991 (1929)
- Ellis v. D'Angelo, 116 Cal. App. 2d 310, 253 P.2d 675 (1953)
- Condel v. Savo, 350 Pa. 350, 39 A.2d 51 (1944)
- Dinsmore-Poff v. Alvord, 972 P.2d 978 (Alaska 1999)
- Gissen v. Goodwill, 80 So. 2d 701 (Fla. 1955)
- Parsons v. Smithey, 109 Ariz. 49, 504 P.2d 1272 (1973)
- Barth v. Massa, 201 Ill. App. 3d 19, 558 N.E.2d 528, 146 Ill. Dec. 565 (1990)

- Wells v. Hickman, 657 N.E.2d 172 (Ind. App. 1995)
- Barrett v. Pacheco, 62 Wash. App. 717, 815 P.2d 834 (1991)
- Nielsen v. Spencer, 287 Wis. 2d 273, 704 N.W.2d 390 (Wis. App. 2005)
- Lackman v. Rousselle, 257 Neb. 87, 596 N.W.2d 15 (1999)
- Kirby v. Liska, 217 Neb. 848, 351 N.W.2d 421 (1984)
- McMillan Co. v. Nebraska E. G. & T. Coop., Inc., 192 Neb. 744, 224 N.W.2d 184 (1974)

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