

SUPREME COURT OF NEBRASKA

Anderson v. Union Pacific Railroad Company

Anderson v. Union Pacific RR. Co., 295 Neb. 785 (2017) · No. No. S-15-1224 · Decided February 10, 2017

SUMMARY

The Nebraska Supreme Court reviewed a Federal Employers’ Liability Act personal-injury action arising from the collapse of a railroad employee’s chair. The court held that the district court improperly instructed the jury on res ipsa loquitur because the plaintiff alleged and presented evidence of specific negligence and the instructions permitted inconsistent findings. The court vacated the verdict and judgment, reversed the order denying a new trial, and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Wright, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	February 10, 2017
DOCKET	No. S-15-1224
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Union Pacific appealed from a judgment entered after a jury verdict for Anderson in his Federal Employers’ Liability Act personal-injury action. Union Pacific challenged, among other things, the jury instructions on res ipsa loquitur and the district court’s denial of its motion for a new trial.
STANDARD OF REVIEW	The correctness of jury instructions is a question of law reviewed independently. An erroneous instruction requires a new trial when it is prejudicial or adversely affects a substantial right.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court decision and binding precedent in Nebraska.
PARTIES	Union Pacific Railroad Company v. Dan Anderson

TOPICS

- jury instructions
- negligence
- evidence
- standard of review
- appellate procedure

PRACTICE AREAS

Federal Employers' Liability Act

personal injury

negligence

civil appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by instructing the jury on *res ipsa loquitur* when Anderson alleged specific negligent acts and presented direct evidence of the precise cause of the chair's collapse.
2. Whether the internally inconsistent *res ipsa loquitur* instructions and special verdict form were prejudicial and required a new trial.
3. Whether the Nebraska procedural law governing *res ipsa loquitur* applied to the FELA claim.

HOLDINGS

1. A Nebraska state court may apply state procedural rules to a FELA claim unless FELA provides otherwise, while substantive issues are governed by FELA and federal decisions interpreting it. *Res ipsa loquitur* is procedural, so Nebraska law governed the instruction.
2. *Res ipsa loquitur* is unavailable when the plaintiff alleges specific acts of negligence or presents direct evidence of the precise cause of the accident. It applies only when the plaintiff cannot allege or prove the particular negligent act that caused the injury.
3. A jury instruction that misstates the issues and tends to confuse the jury is erroneous. The internally inconsistent instruction permitting the jury to find both that specific negligence was proved and that specific negligence could not be proved was prejudicial and required a new trial.

KEY QUOTATIONS

“Res ipsa loquitur is a procedural tool that, if applicable, allows an inference of a defendant’s negligence to be submitted to the fact finder, where it may be accepted or rejected.” (792)

“Accordingly, the doctrine of res ipsa did not apply to this case.” (793)

“This is clearly a contradiction, and we cannot find that this did not cause confusion for the jury.” (793)

“We conclude that the district court committed reversible error in instructing the jury on res ipsa loquitur.” (794)

FACTUAL BACKGROUND

On October 2, 2007, Dan Anderson fell when a chair collapsed while he was working as a control operator for Union Pacific. The collapse was immediately attributable to a failed bolt, and the parties presented competing expert opinions about whether the failure resulted from use beyond the chair's load limit or manufacturer overtightening. Anderson's complaint alleged specific negligent acts, including failure to provide, inspect, maintain, and replace safe equipment, and he later added a *res ipsa loquitur* claim. The jury found both specific negligence and *res ipsa loquitur* and awarded Anderson damages.

PROCEDURAL HISTORY

Anderson sued Union Pacific under FELA after a chair collapsed while he was working, causing him injury. A jury found for Anderson under both ordinary negligence and res ipsa loquitur and awarded \$920,007 in damages. The district court denied Union Pacific's motions for judgment notwithstanding the verdict and a new trial, but granted a medical-expense setoff. The Nebraska Supreme Court held that the res ipsa loquitur instruction was erroneous and prejudicial, vacated the verdict and judgment, reversed the order denying a new trial, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct a new trial consistent with the Nebraska Supreme Court's opinion, without submitting negligence based on res ipsa loquitur under the circumstances presented.

CASES CITED

- Kuhnel v. BNSF Railway Co., 287 Neb. 541, 844 N.W.2d 251 (2014)
- Swierczek v. Lynch, 237 Neb. 469, 466 N.W.2d 512 (1991)
- McCall v. St. Joseph's Hospital, 184 Neb. 1, 165 N.W.2d 85 (1969)
- McLaughlin Freight Lines v. Gentrup, 281 Neb. 725, 798 N.W.2d 386 (2011)
- Ramsouer v. Midland Valley R. Co., 135 F.2d 101, 106 (8th Cir. 1943)
- Weigand v. Pennsylvania Railroad Company, 267 F.2d 281 (3d Cir. 1959)
- United Gen. Title Ins. Co. v. Malone, 289 Neb. 1006, 858 N.W.2d 196 (2015)
- Stahlecker v. Ford Motor Co., 266 Neb. 601, 667 N.W.2d 244 (2003)
- Bargmann v. Soll Oil Co., 253 Neb. 1018, 574 N.W.2d 478 (1998)
- Finley v. Brickman, 186 Neb. 747, 186 N.W.2d 111 (1971)
- Long v. Hacker, 246 Neb. 547, 520 N.W.2d 195 (1994)
- Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 291 Neb. 642, 868 N.W.2d 67 (2015)
- Gray v. Kenney, 290 Neb. 888, 863 N.W.2d 127 (2015)

OPINION

Anderson v. Union Pacific RR. Co.

295 Neb. 785

PER CURIAM.

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- 785 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 Dan Anderson, appellee, v. Union Pacific Railroad Company, a Delaware corporation, appellant. ____ N.W.2d ____ Filed February 10, 2017. No. S-15-

1224.

1. Federal Acts: Railroads: Claims: Courts. In disposing of a claim controlled by the Federal Employers' Liability Act, a state court may use procedural rules applicable to civil actions in the state court unless otherwise directed by the act, but substantive issues concerning a claim under the act are determined by the provisions of the act and interpretive decisions of the federal courts construing the act.
2. Negligence: Proof. The essence of *res ipsa loquitur* is that the facts speak for themselves and lead to a proper inference of negligence by the fact finder without further proof.
3. Negligence: Presumptions. The doctrine of *res ipsa loquitur* is an exception to the general rule that negligence cannot be presumed. *Res ipsa loquitur* is a procedural tool that, if applicable, allows an inference of a defendant's negligence to be submitted to the fact finder, where it may be accepted or rejected.
4. Jury Instructions. Whether the jury instructions given by a trial court are correct is a question of law.
5. Judgments: Appeal and Error. When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court.
6. Negligence. If specific acts of negligence are alleged or there is direct evidence of the precise cause of the accident, the doctrine of *res ipsa loquitur* is not applicable.
7. _____. The doctrine of *res ipsa loquitur* is applicable only where the plaintiff is unable to allege or prove the particular act of negligence which caused the injury.
8. Jury Instructions: Appeal and Error. A jury instruction which misstates the issues and has a tendency to confuse the jury is erroneous. - 786 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 Appeal from the District Court for Scotts Bluff County: Randall L. Lippstreu, Judge. Reversed and vacated, and cause remanded for a new trial. William M. Lamson, Jr., and Cathy S. Trent-Vilim, of Lamson, Dugan & Murray, L.L.P., and Torry N. Garland, of Union Pacific Railroad Company, for appellant. Kyle J. Long, Robert G. Pahlke, and Robert O. Hippe, of Robert Pahlke Law Group, for appellee. Nichole S. Bogen, of Sattler & Bogen, L.L.P., and Kathryn D. Kirmayer and Daniel Saphire, of Association of American Railroads, for amicus curiae Association of American Railroads. Heavican, C.J., Wright, Cassel, Stacy, K elch, and Funke, JJ. K elch, J.

INTRODUCTION

This appeal arises from Dan Anderson's suit against Union Pacific Railroad Company (Union Pacific) pursuant to the Federal Employers' Liability Act (FELA) for personal injury arising from his employment. A jury awarded Anderson damages, including past medical expenses. On appeal, Union Pacific challenges, among other things, the jury instructions on *res ipsa loquitur*. We

conclude that the district court committed reversible error in instructing the jury and in overruling Union Pacific's resulting motion for new trial. Therefore, we vacate the jury's verdict and the judgment entered against Union Pacific. We reverse the order overruling Union Pacific's motion for new trial and remand the cause to the district court for a new trial consistent with this opinion.

BACKGROUND

On October 2, 2007, Anderson fell to the floor while on duty as a control operator for Union Pacific when the chair - 787 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 in which he sat collapsed. In March 2010, Anderson brought an action against Union Pacific under FELA, asserting that permanent back injuries resulted from the fall and seeking damages. He alleged that Union Pacific was negligent in that it failed to (1) provide a safe workplace, (2) properly maintain and inspect the chair, (3) have a reasonable replacement process in place for office equipment, and (4) properly instruct its employees on how to inspect their office chairs. Union Pacific generally denied Anderson's allegations. On October 6, 2014, Union Pacific moved in limine to exclude evidence of Anderson's medical expenses altogether, while on October 13, Anderson moved in limine to preclude Union Pacific from offering evidence at trial of the amounts it had paid to satisfy the expenses. In January 2015, the district court sustained Anderson's motion to preclude evidence of amounts paid by Union Pacific and stated that claims for credits or offsets could be addressed by posttrial motions. The district court overruled Union Pacific's motion in limine. In June 2015, approximately 3 months before trial, the district court granted Anderson leave to amend his complaint to allege *res ipsa loquitur*. The amended complaint included the original theories of negligence and added that Union Pacific had failed to provide Anderson with a chair that was safe for the purpose for which it was used, along with a claim for *res ipsa loquitur*. At trial, the jury heard undisputed evidence that the cause of the chair's collapse was immediately apparent after Anderson's fall: a bolt had failed. Anderson elicited expert opinion testimony that the bolt failed because the chair was routinely used outside its load limit. However, Union Pacific's expert opined that the bolt failed because it had been overtightened by the manufacturer. Both parties presented evidence that the defect in the bolt could not be seen with the naked eye and likely could not have been discovered upon an inspection by Anderson. - 788 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 The jury heard evidence that before the collapse, the chair never wobbled or required repair. Anderson testified that on the day of the accident, he observed no apparent defects and believed the chair was safe to use. The manager of terminal operations for Anderson's terminal testified that Union Pacific did not designate employees to inspect, maintain, or repair defects in the office equipment at Anderson's terminal. Instead, Union Pacific required its employees to inspect their tools and equipment, but it did not provide them with training or instruction on how to inspect office chairs. Employees reported any defects in office equipment to their manager for replacement or repair. According to the evidence at trial, Union Pacific had "Herman Miller Aeron

B” chairs, like the chair that collapsed, in several of its terminals. Union Pacific generally documented complaints about its equipment, and it received no complaints about bolt fractures occurring with that brand of chair before or after Anderson’s fall, nor did Anderson himself make any kind of complaint about his chair in particular before the fall. Union Pacific’s manager of safety testified that Union Pacific had selected the “Herman Miller Aeron B” chair in 2002 based on a specific list of criteria, including a 300-pound working load limit. The manufacturer’s literature limited the weight of the chair’s occupants to either 270 or 300 pounds, depending on the occupant’s height. Union Pacific’s manager of safety also testified that regular use of the chair by individuals who exceeded its working load limit would create excess stress that could cause the chair to break before the 12-year warranty period expired. He further stated that the chair would not be appropriate for individuals who weighed more than 300 pounds and that continual use by such individuals would constitute abuse of the chair’s intended use. The manager of terminal operations, tasked with training employees to follow safety rules in Anderson’s terminal, - 789 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 testified that at the time of Anderson’s accident, he was not aware of any load limit for the chair that collapsed. Ronald Wilkinson, who had worked as a control operator in Anderson’s office around the time of the accident, testified that he was warned that individuals over 300 pounds should not sit in the chair that ultimately failed. Wilkinson testified that the chair was used by two Union Pacific control operators whose weight likely exceeded the 300-pound load limit. However, one of those individuals testified that he never sat in the chair, in accordance with Wilkinson’s instructions not to use it because he was “too big for it.” Wilkinson did not recall giving such an instruction. Anderson testified that Union Pacific did not inform him of a 270-pound load limit for the chair, nor was he aware of Union Pacific’s informing anyone else. Anderson testified that at the time of the accident, he did not exceed the chair’s load limit. Anderson estimated that three control operators probably weighed more than 300 pounds, and certainly more than 270 pounds, but he did not specifically testify that these control operators used the chair. Anderson sought a variety of nonsurgical treatments for his injuries and eventually underwent surgery to fuse his lumbar spine. Over objections by Union Pacific, the district court received evidence of Anderson’s medical expenses. Union Pacific made an offer of proof to preserve the issue of its payment of Anderson’s medical expenses. Union Pacific moved for a directed verdict at the close of Anderson’s evidence and again at the close of Union Pacific’s evidence. The district court denied the motions. The district court instructed the jury on *res ipsa loquitur* and on two theories of negligence: that Union Pacific failed to provide reasonably safe equipment and that it failed to provide a safe place to work. The district court’s instructions allowed for separate findings of ordinary negligence, negligence based upon *res ipsa loquitur*, or both. Union Pacific objected to the court’s *res ipsa loquitur* instruction in its entirety. - 790 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 The jury returned a special verdict for Anderson, finding

that he had proved both specific acts of negligence causing injury and *res ipsa loquitur*. The jury awarded Anderson damages of \$920,007, which included \$266,925 for past medical expenses. Following the verdict, Union Pacific filed a motion for judgment notwithstanding the verdict. Alternatively, it sought a setoff against the judgment and a new trial, arguing, among other things, that the district court erred in its treatment of medical expenses and in instructing the jury on *res ipsa loquitur*. The district court overruled the motion for judgment notwithstanding the verdict and the motion for new trial. However, it granted the motion for setoff in the amount of \$162,964.25, representing medical expenses paid by Union Pacific. This setoff did not include medical expenses written off by providers as a result of negotiations with Union Pacific, and the district court noted that Union Pacific had not paid or contributed to the writeoff. Union Pacific now appeals. Through no fault of either party, the record does not contain a pretrial conference or closing arguments.

ASSIGNMENTS OF ERROR

Union Pacific assigns, condensed and restated, that (1) the district court erred in overruling Union Pacific's motions for directed verdict and judgment notwithstanding the verdict; (2) Union Pacific is entitled to a new trial because portions of the record were not preserved, as requested by Union Pacific;

(3) the district court erred in instructing the jury on *res ipsa*

loquitur; (4) the district court erred in allowing Anderson to introduce irrelevant evidence of his medical expenses and refusing to allow Union Pacific to offer evidence that it paid the medical expenses; and (5) the district court erred in calculating the posttrial setoff. - 791 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785

ANALYSIS

As noted above, the jury instructions allowed the jury to return a verdict making separate findings of ordinary negligence, negligence based upon *res ipsa loquitur*, or both. Union Pacific principally contends that the jury instructions were incorrect, because Anderson should not have been permitted to pursue a negligence claim simultaneously based on both specific acts of negligence and *res ipsa loquitur*. Alternatively, Union Pacific contends that the jury instructions were prejudicial, because the special verdict form confused the jury by allowing the following inconsistent findings: (1) that Anderson proved specific acts of negligence and (2) that specific acts of negligence could not be proved. We agree with Union Pacific.

[1] We begin our analysis by acknowledging that in disposing of a claim controlled by FELA, a state court may use procedural rules applicable to civil actions in the state court unless otherwise directed by the act, but substantive issues concerning a claim under FELA are determined by the provisions of the act and interpretive decisions of the federal courts construing FELA. *Kuhnel v. BNSF Railway Co.*, 287 Neb. 541, 844 N.W.2d 251 (2014). Thus, initially we must determine whether the doctrine of *res ipsa loquitur* is a procedural

matter or substantive law. [2,3] ““The essence of res ipsa loquitur is that the facts speak for themselves and lead to a proper inference of negligence by the fact finder without further proof.”” *Swierczek v. Lynch*, 237 Neb. 469, 477, 466 N.W.2d 512, 517 (1991), quoting *McCall v. St. Joseph’s Hospital*, 184 Neb. 1, 165 N.W.2d 85 (1969). The doctrine of res ipsa loquitur is an exception to the general rule that negligence cannot be presumed. *McLaughlin Freight Lines v. Gentrup*, 281 Neb. 725, 798 N.W.2d 386 (2011). Res ipsa loquitur is a procedural tool that, if applicable, allows an inference of a defendant’s negligence to be submitted to the fact finder, where it may be accepted or rejected. *Id.* See, also, *Swierczek v. Lynch*, - 792 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 *supra* (res ipsa loquitur is procedural doctrine and not part of substantive law). On this point, the federal courts are in agreement that res ipsa loquitur is “not a rule of pleading, not a substantive rule of law, but a rule of evidence.” *Ramsouer v. Midland Valley R. Co.*, 135 F.2d 101, 106 (8th Cir. 1943). See, also, *Weigand v. Pennsylvania Railroad Company*, 267 F.2d 281 (3d Cir. 1959). Accordingly, we shall apply Nebraska law in analyzing whether the district court erred in instructing the jury on res ipsa loquitur. [4-7] Whether the jury instructions given by a trial court are correct is a question of law. *United Gen. Title Ins. Co. v. Malone*, 289 Neb. 1006, 1018, 858 N.W.2d 196, 210 (2015). When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court. *Id.* We have held that if specific acts of negligence are alleged or there is direct evidence of the precise cause of the accident, the doctrine of res ipsa loquitur does not apply. *Stahlecker v. Ford Motor Co.*, 266 Neb. 601, 667 N.W.2d 244 (2003). See, also, *Bargmann v. Soll Oil Co.*, 253 Neb. 1018, 574 N.W.2d 478 (1998) (simply pleading specific acts of negligence in complaint will render doctrine of res ipsa loquitur inapplicable); *Finley v. Brickman*, 186 Neb. 747, 186 N.W.2d 111 (1971) (if petition alleges particular acts of negligence, then plaintiff must establish specific negligence alleged, and doctrine of res ipsa loquitur cannot be applied). The doctrine is applicable only where the plaintiff is unable to allege or prove the particular act of negligence which caused the injury. *Long v. Hacker*, 246 Neb. 547, 520 N.W.2d 195 (1994).

Here, Anderson pled specific acts of negligence in the operative amended complaint. Further, at trial, Anderson presented direct evidence of the cause of the chair’s collapse through expert testimony that the chair collapsed because a bolt failed. Further, the expert opined that the bolt failed because users exceeded the chair’s load limit over a period - 793 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 of time. Accordingly, the doctrine of res ipsa did not apply to this case. Furthermore, the district court erred in instructing the jury on res ipsa loquitur in this instance. As Union Pacific notes, the jury instructions first stated that to find ordinary negligence, Anderson must prove specific acts of negligence by Union Pacific. Then, the jury was instructed that to find negligence

via *res ipsa loquitur*, it had to find that Union Pacific's specific acts of negligence could not be proved. The instructions then allowed the jury to determine whether Anderson could recover under (1) ordinary negligence, (2) negligence based on *res ipsa loquitur*, or (3) both. Notably, within the same instruction, the jury was advised that they could return a verdict finding both (1) that specific acts of negligence by Union Pacific had been proved and (2) that specific acts of negligence could not be proved. And the jury found that both were true. This is clearly a contradiction, and we cannot find that this did not cause confusion for the jury.

[8] A jury instruction which misstates the issues and has

a tendency to confuse the jury is erroneous. *Long v. Hacker*, *supra*. If an erroneous jury instruction was prejudicial, or otherwise adversely affected a substantial right of the movant, a motion for new trial must be granted. See *Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist.*, 291 Neb. 642, 868 N.W.2d 67 (2015). In this case, it is apparent that the *res ipsa loquitur* instructions' internal inconsistencies distracted the jury, which, in turn, led to the jury's inconsistent and irreconcilable verdict. Thus, the erroneous jury instructions prejudiced Union Pacific. We conclude that the district court erred in submitting to the jury the issue of negligence based upon *res ipsa loquitur* and that such error prejudiced Union Pacific. We therefore vacate the verdict of the jury and remand the cause for a new trial. Our determination that the district court committed reversible error by instructing the jury on *res ipsa loquitur* resolves - 794 - Nebraska Supreme Court Advance Sheets 295 Nebraska Reports ANDERSON v. UNION PACIFIC RR. CO. Cite as 295 Neb. 785 this appeal, and we shall not consider Union Pacific's additional assignments of error. See *Gray v. Kenney*, 290 Neb. 888, 863 N.W.2d 127 (2015) (appellate court is not obligated to engage in analysis not needed to adjudicate case and controversy before it).

CONCLUSION

We conclude that the district court committed reversible error in instructing the jury on *res ipsa loquitur*. Accordingly, we vacate the jury's verdict and the judgment entered against Union Pacific. We reverse the order overruling Union Pacific's motion for new trial and remand the cause to the district court for a new trial consistent with this opinion. Reversed and vacated, and cause remanded for a new trial. Miller-Lerman, J., not participating.