

SUPREME COURT OF ALASKA

Pagenkopf v. Chatham Electric, Inc.

165 P.3d 634 (Alaska 2007) · No. Nos. S-11580, S-11729, S-11739 · Decided August 24, 2007

SUMMARY

The Alaska Supreme Court reviewed appeals arising from a personal-injury action in which a garage door injured Ronald Pagenkopf. The court held that Chatham Electric's pretrial offer of judgment did not support an award of attorney's fees and costs under Alaska Civil Rule 68 because it created significant apportionment difficulties involving a third-party equitable-apportionment claim against Hugh Dilbeck. The court also addressed prejudgment interest and a challenged jury instruction, concluding that the instruction did not improperly apply negligence per se or prejudice Dilbeck.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Chief Justice Bryner; Justice Matthews; Justice Eastaugh; Justice Fabe
JURISDICTION	Alaska
DECIDED	August 24, 2007
DOCKET	Nos. S-11580, S-11729, S-11739
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a jury found Pagenkopf, Chatham, and Dilbeck comparatively at fault and awarded damages, the superior court awarded Chatham attorney fees and costs under Alaska Civil Rule 68 and ordered prejudgment interest against Dilbeck from the date he was served with Chatham's third-party complaint. The parties cross-appealed various aspects of the judgment.
STANDARD OF REVIEW	Questions of law, including interpretation of contracts, statutes, and Alaska Civil Rule 68, were reviewed independently or de novo. Jury-instruction issues were reviewed de novo, and instructional error warranted reversal only if it caused prejudice.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Ronald J. Pagenkopf, Chatham Electric, Inc., Hugh Dilbeck, individually and doing business as Bear Body Works v. Chatham Electric, Inc., Hugh Dilbeck, individually and doing business as Bear Body Works, Ronald J. Pagenkopf

TOPICS

offer of judgment third party practice comparative fault prejudgment interest negligence

PRACTICE AREAS

civil procedure torts remedies appellate procedure

QUESTIONS PRESENTED

1. Whether Chatham's pretrial offer of judgment was sufficiently definite and free of apportionment difficulties to support an award of attorney fees and costs under Alaska Civil Rule 68.
2. Whether prejudgment interest against Dilbeck accrued from the date he received service of Chatham's third-party complaint or from an earlier date when he received actual notice that a claim might be brought.
3. Whether the superior court's rulings on collateral-benefit offsets and other monetary calculations required appellate review.
4. Whether the jury instruction concerning an OSHA ladder-safety regulation improperly instructed the jury to apply negligence per se or otherwise prejudiced Dilbeck.

HOLDINGS

1. An offer of judgment that is definite and unambiguous may nevertheless be invalid for Rule 68 fee-shifting purposes when it creates substantial and unknowable apportionment difficulties involving a pending equitable-apportionment claim and other responsible parties. Chatham's offer therefore could not support an award of Rule 68 fees and costs.
2. Under AS 09.30.070(b), prejudgment interest may begin when the defendant receives actual notice that an injury occurred and that a claim may be brought, even if the notice is not written or does not identify the claimant's intended legal theory. The superior court was required to determine the precise earlier accrual date on remand, with accrual no later than the date of mediation.
3. The court declined to decide Chatham's challenges to collateral-benefit offsets, fee calculations, and costs because vacatur of the Rule 68 award required a new judgment and rendered those calculation issues moot.
4. The challenged instruction did not instruct the jury to apply negligence per se. It permissibly treated violation of the OSHA regulation as evidence from which the jury could find negligence, and its additional compliance language did not cause substantial prejudice or reversible error.

KEY QUOTATIONS

"In applying Rule 68, we have consistently emphasized that an enforceable offer must be unambiguous: One of the protections afforded by the Civil Rule 68 procedure is that the offer of judgment must be definite." (at 638-639)

"We therefore conclude that these apportionment difficulties prevented Chatham's offer from triggering an award of fees and costs under Rule 68." (at 643-644)

“Under this provision, a potential defendant does not need to receive notice of an actual claim, but rather only needs to receive notice that a claim may be brought.” (at 645)

“Instead, by stating that if the jury found that Dilbeck had violated the OSHA regulation, “then you may find Hugh Dilbeck negligent,” Instruction 22 mirrored the language of Pattern Instruction 03.04B—the instruction dealing with use of a law as evidence of negligence.” (at 648)

FACTUAL BACKGROUND

Nick Goddard, an employee of Chatham Electric, opened an overhead garage door while working at Hugh Dilbeck's auto body shop. The door struck Ronald Pagenkopf, who was standing on a ladder installing lights, causing severe injuries. Chatham pursued an equitable-apportionment claim against Dilbeck, and the jury allocated fault among Pagenkopf, Chatham, and Dilbeck. Chatham had offered Pagenkopf \$525,000 in complete satisfaction of his claims against Chatham and Goddard, but the offer did not address the effect on Chatham's third-party claim against Dilbeck or disclose Dilbeck's apparent agreement to contribute to the offer.

PROCEDURAL HISTORY

Pagenkopf sued Chatham and its employee after being injured by an overhead garage door opened by the employee. Chatham filed a third-party equitable-apportionment claim against Dilbeck. Pagenkopf rejected Chatham's \$525,000 offer of judgment, and the jury awarded total damages of \$698,800, allocating 28% of fault to Chatham, 50% to Dilbeck, and 22% to Pagenkopf. The superior court treated Chatham as the prevailing party under Rule 68, awarded it more than \$50,000 in post-offer fees and costs, and awarded prejudgment interest against Dilbeck beginning on April 2, 2002.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the award of Rule 68 attorney fees and costs to Chatham; determine the precise date when Dilbeck had actual notice sufficient to begin prejudgment interest, no later than the date of mediation; and enter a modified judgment consistent with those rulings. The superior court's judgment was affirmed in all other respects.

CASES CITED

- Jaso v. McCarthy, 923 P.2d 795, 801 (Alaska 1996)
- Alaska Energy Auth. v. Fairmont Ins. Co., 845 P.2d 420, 421 (Alaska 1993)
- Toney v. Fairbanks N. Star Borough Sch. Dist. Bd. of Educ., 881 P.2d 1112, 1114 (Alaska 1994)
- Thomann v. Fouse, 93 P.3d 1048, 1050 (Alaska 2004)
- John's Heating Serv. v. Lamb, 46 P.3d 1024, 1042 (Alaska 2002)
- Brinkerhoff v. Swearingen Aviation Corp., 663 P.2d 937, 943 (Alaska 1983)
- Taylor Constr. Servs., Inc. v. URS Co., 758 P.2d 99, 102 (Alaska 1988)
- Alaska Gen. Alarm, Inc. v. Grinnell, 1 P.3d 98, 101-105 (Alaska 2000)

- Benner v. Wichman, 874 P.2d 949, 956-957 (Alaska 1994)
- Cook Schuhmann & Groseclose, Inc. v. Brown & Root, Inc., 116 P.3d 592, 598 (Alaska 2005)
- Fernandes v. Portwine, 56 P.3d 1, 8 (Alaska 2002)
- Beaux v. Jacob, 30 P.3d 90, 100 (Alaska 2001)
- Sosa v. State, 4 P.3d 951, 953 (Alaska 2000)
- Lloyd's & Inst. of London Underwriting Cos. v. Fulton, 2 P.3d 1199, 1210-1211 (Alaska 2000)
- Himschoot v. Shanley, 908 P.2d 1035, 1042-1043 (Alaska 1996)
- McConkey v. Hart, 930 P.2d 402, 404-405 (Alaska 1996)
- Reich v. Cominco Alaska, Inc., 56 P.3d 18, 25 (Alaska 2002)
- State, Department of Corrections v. Johnson, 2 P.3d 56, 59 (Alaska 2000)
- Bachner v. Rich, 554 P.2d 430, 441-443 (Alaska 1976)