

SUPREME COURT OF SOUTH DAKOTA

Hohm v. City of Rapid City

2008 SD 65 (S.D. 2008) · No. No. 24105 · Decided July 16, 2008

SUMMARY

The South Dakota Supreme Court held that legislative enactments abrogated municipalities' common-law duties concerning the construction and maintenance of streets, limiting their obligations to statutory duties to guard and repair damaged or destroyed highways. The court overruled contrary post-1939 precedent but applied its ruling prospectively because the parties had relied on the prior law. The judgment for Adam Hohm's guardians and conservators was affirmed.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                       |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Dakota                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Zinter, Justice; Gilbertson, Chief Justice; Konen kamp, Justice; Meierhenry, Justice; Miller, Retired Justice; Sabers, Justice                                                                                                                                                        |
| JURISDICTION          | South Dakota                                                                                                                                                                                                                                                                          |
| DECIDED               | July 16, 2008                                                                                                                                                                                                                                                                         |
| DOCKET                | No. 24105                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | The City appealed after the circuit court denied its motions for summary judgment, directed verdict, judgment notwithstanding the verdict, and a new trial, and a jury returned a verdict for the plaintiffs in a negligence action arising from a vehicle accident on a city street. |
| STANDARD OF REVIEW    | The existence of a duty in a negligence action is a question of law reviewed de novo.                                                                                                                                                                                                 |
| PRECEDENTIAL VALUE    | Published precedential opinion; establishes a prospective rule abrogating the common-law municipal duty to maintain streets in a reasonably safe condition.                                                                                                                           |
| PARTIES               | City of Rapid City v. Dean Hohm and Jean Hohm, as Guardians ad Litem and Conservators for Adam Hohm                                                                                                                                                                                   |

TOPICS

- municipal liability
- statutory interpretation
- negligence
- duty of care
- personal injury

## PRACTICE AREAS

municipal liability

negligence

statutory interpretation

personal injury

## QUESTIONS PRESENTED

1. Whether South Dakota statutes enacted in 1915 and 1939 abrogated the common-law duty of municipalities to construct and maintain streets in a reasonably safe condition.
2. Whether the statutory duty under SDCL 31-32-10 limited municipal liability to the duty to guard and repair damaged or destroyed highways.
3. Whether the Court's ruling abrogating the common-law municipal street-maintenance duty should apply prospectively only.
4. Whether the circuit court erred in allowing the plaintiffs' verdict to stand under the prior common-law duty.

## HOLDINGS

1. The 1915 legislation created a comprehensive statutory scheme governing liability for highway maintenance by cities, towns, counties, and townships, and the 1939 revisions fully abrogated any remaining common-law municipal duty to maintain streets in a reasonably safe condition. Municipal duties concerning streets are limited by statute, including the duty to guard and repair highways that are damaged or destroyed.
2. The decision abrogating the common-law municipal street-maintenance duty applies prospectively only.
3. The circuit court did not err in determining that Rapid City owed Adam a common-law duty to maintain its streets safely, because the Court's abrogation of that duty applied prospectively only.

## KEY QUOTATIONS

*“Based upon this history, cities' common-law duties respecting streets were abrogated by these legislative enactments. The duties are now limited by statute, and any language in the decisions of this Court after 1939 recognizing a common-law duty on the part of municipalities with regard to streets or highways is hereby overruled.”* (753 N.W.2d at 905)

*“Based upon the foregoing factors, we hold that this decision is prospective only.”* (753 N.W.2d at 907)

*“Thus, under our prior cases, we conclude that the trial court did not err in determining that the City had a common-law duty to safely maintain its streets.”* (753 N.W.2d at 907)

## FACTUAL BACKGROUND

On December 27, 2000, sixteen-year-old Charissa Hitchcock drove on a slippery, snow-covered street through Canyon Lake Park in Rapid City. At a sharp curve, the vehicle skidded off the street and landed upside down in a canal. Passenger Adam Hohm was trapped underwater and suffered severe brain damage from oxygen deprivation. His guardians and conservators sued the City based on alleged duties concerning street construction, maintenance, barriers, and warning signs.

## PROCEDURAL HISTORY

The Hohms sued Rapid City, alleging duties relating to the construction, maintenance, guarding, and warning of dangers on city streets. The City argued that it owed no duty under common law or statute. The circuit court denied the City's motions, instructed the jury, and entered judgment on a verdict for the Hohms. The Supreme Court affirmed, holding that its new rule abrogating the common-law municipal street-maintenance duty applied prospectively only, so the prior common-law rule governed this case.

## DISPOSITION

affirmed

## CASES CITED

- State Auto Ins. Companies v. B.N.C., 2005 SD 89, 702 N.W.2d 379
- Bailey v. Lawrence County, 5 S.D. 393, 59 N.W. 219 (1894)
- Reaney v. Union County, 69 S.D. 392, 10 N.W.2d 762 (1943)
- Dohrman v. Lawrence County, 82 S.D. 207, 143 N.W.2d 865 (1966)
- McKellips v. Mackintosh, 475 N.W.2d 926 (S.D. 1991)
- Burnett v. Myers, 42 S.D. 233, 173 N.W. 730 (1919)
- Robinson v. Minnehaha County, 65 S.D. 628, 277 N.W. 324 (1938)
- Burgard v. Benedictine Living Communities, 2004 SD 58, 680 N.W.2d 296
- Patterson v. McLean Credit Union, 491 U.S. 164 (1989)
- Eberle v. Siouxland Packing Co., Inc., 266 N.W.2d 256 (S.D. 1978)
- Gulbranson v. Flandreau Township, 458 N.W.2d 361 (S.D. 1990)
- Wilson v. Hogan, 473 N.W.2d 492 (S.D. 1991)
- Loesch v. City of Huron, 2006 SD 93, 723 N.W.2d 694

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