

SUPREME COURT OF MONTANA

Sherner v. National Loss Control Services Corp.

329 Mont. 247 (2005) · Decided November 15, 2005

SUMMARY

The Montana Supreme Court affirmed summary judgment dismissing the Sherners’ claims against Conoco, National Loss Control Services Corporation, Crawford & Company, and Cathy Andersen arising from an investigation and criminal prosecution for alleged insurance fraud. The Court held that Andersen acted within the scope of her employment and that the defendants were immune under Montana’s insurance-fraud reporting statute because the record did not show malice. The Court vacated the costs portion of the judgment and remanded for compliance with the statutory procedure allowing the opposing party time to object to claimed costs.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Gray; Justice Cotter; Justice Leaphart; Justice Nelson; Justice Rice; Justice Warner
JURISDICTION	Montana
DECIDED	November 15, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Sherners appealed from summary judgments dismissing their claims against Conoco, National, Crawford, and Andersen, and from the award and assessment of defense costs.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under Rule 56, M.R.Civ.P. The moving party must establish the absence of a genuine issue of material fact and entitlement to judgment as a matter of law; the burden then shifts to the opposing party to show, beyond mere denial and speculation, a genuine issue of material fact.
PRECEDENTIAL VALUE	published
PARTIES	Peter R. Sherner, Deborah Sherner v. National Loss Control Services Corporation, Conoco, Crawford & Company, Cathy Andersen

TOPICS

- summary judgment
- costs
- malicious prosecution
- statutory interpretation
- appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

insurance

torts

statutory interpretation

remedies

QUESTIONS PRESENTED

1. Whether summary judgment was proper for Cathy Andersen on the ground that she acted within the course and scope of her employment.
2. Whether Montana's insurance-fraud reporting immunity statute, § 33-1-1210, MCA, barred the Sherners' claims absent evidence of malice.
3. Whether summary judgment was proper on the Sherners' malicious-prosecution claim.
4. Whether the District Court improperly set the amount of defense costs before allowing the Sherners the statutory period to object.

HOLDINGS

1. Summary judgment for Andersen was proper because the record contained no evidence that she acted negligently or tortiously in a personal capacity; she acted within the course and scope of her employment and was not personally liable for the challenged conduct.
2. Section 33-1-1210(1), MCA, immunizes an insurer, adjuster, employee, or private person from civil liability for reporting or cooperating with an insurance-fraud investigation when the conduct is not malicious. For purposes of that statute, malice is defined by § 1-1-204(3), MCA, as a wish to vex, annoy, or injure another person or an intent to do a wrongful act.
3. Summary judgment for all defendants was proper on the malicious-prosecution claim because the Sherners presented no evidence that the defendants instigated, prosecuted, or continued the criminal proceeding or acted with malice.
4. The District Court erred by entering judgment for specified costs before the Sherners had the five-day statutory period to object to the bills of costs. The cost provision in the judgment and the January 6, 2004 notice were vacated, and the matter was remanded for costs proceedings consistent with the statutory procedure.

KEY QUOTATIONS

“In the absence of malice, an insurer, an officer, employee, or producer of the insurer, an independent adjuster, an administrator, a consultant, or any private person is not subject to civil liability for filing reports, providing information, or otherwise cooperating with an investigation or examination of insurance fraud conducted by the commissioner.” (255-256)

“If the plaintiff fails to offer proof of any one of these elements, the action fails, and summary judgment in favor of the defendant is proper.” (258)

“Section 25-10-502, MCA, expressly provides that a party dissatisfied with the amounts contained in a bill of costs filed pursuant to § 25-10-501, MCA, has 5 days after notice of that filing to object by filing and serving a notice of a motion to have the costs taxed.” (259)

FACTUAL BACKGROUND

Peter Sherner was seriously injured by exposure to hydrogen sulfide while working at the Conoco refinery and received workers' compensation benefits. After an investigation revealed that home-health-care provider Bernice Corcoran had billed for services she did not provide, National and Crawford referred information to the Montana State Auditor and cooperated with the investigation. Criminal charges were filed against Peter and Corcoran; the charge against Peter was later dismissed, while Corcoran pleaded guilty. The Sherners then sued the insurers, adjusters, and Andersen for emotional-distress, statutory and constitutional-rights violations, and malicious prosecution.

PROCEDURAL HISTORY

The Sherners filed suit alleging that the defendants maliciously encouraged and assisted an insurance-fraud investigation that led to criminal charges against Peter. The District Court granted Andersen summary judgment in March 2003, granted the remaining defendants summary judgment on December 9, 2003, entered judgment including claimed costs on December 17, 2003, and later entered a January 6, 2004 notice concerning taxation of costs. The Montana Supreme Court affirmed dismissal of the claims, but vacated the cost award and remanded for further proceedings concerning costs.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the January 6, 2004 Notice and the portion of the December 17, 2003 Judgment specifying costs. Remand for further proceedings on costs, allowing the statutory objection period and following the procedures required by §§ 25-10-501, -502, and -504, MCA. The summary judgment and dismissal of the Sherners' claims are affirmed.

CASES CITED

- Sherner v. Conoco, Inc., 2000 MT 50, 298 Mont. 401, 995 P.2d 990
- Farmers Union Mutual Insurance Co. v. Staples, 2004 MT 108, 321 Mont. 99, 90 P.3d 381
- Phillips v. Montana Education Association, 187 Mont. 419, 610 P.2d 154 (1980)
- Crystal Springs Trout Co. v. First State Bank of Froid, 225 Mont. 122, 732 P.2d 819 (1987)
- Bruner v. Yellowstone County, 272 Mont. 261, 900 P.2d 901 (1995)
- Spackman v. Ralph M. Parsons Co., 147 Mont. 500, 414 P.2d 918 (1966)
- Plouffe v. Montana Department of Public Health and Human Services, 2002 MT 64, 309 Mont. 184, 45 P.3d 10
- White v. Murdock, 265 Mont. 386, 877 P.2d 474 (1994)
- Girson v. Girson, 112 Mont. 183, 114 P.2d 274 (1941)
- Gahagan, 100 Mont. 601-02, 612, 52 P.2d 151-52, 156

