SUPREME COURT OF NEBRASKA

Smith v. Fire Insurance Exchange of Los Angeles, California

261 Neb. 857 (Neb. 2001) · No. S-00-299 · Decided May 25, 2001

SUMMARY

The Supreme Court of Nebraska reviewed a jury verdict for an insurer in a homeowners insurance coverage dispute arising from the destruction of the insureds' house by fire. The court held that an instruction emphasizing circumstantial evidence and the typical circumstances of arson was an abstract and prejudicial statement that improperly emphasized the insurer's theory of the case. The court reversed the judgment and remanded for a new trial, while upholding the refusal to give the plaintiffs' proposed instructions concerning fires of unknown origin and circumstantial evidence.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	May 25, 2001
DOCKET	S-00-299
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a jury returned a verdict for the insurer in the Smiths' action seeking coverage for a fire-destroyed home, the Smiths appealed, challenging jury instructions.
STANDARD OF REVIEW	The correctness of a jury instruction is a question of law reviewed independently. Instructions are read together, and reversal for instructional error is warranted only when the error adversely affects the complaining party's substantial rights.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Bobby L. Smith and Teena M. Smith, husband and wife v. Fire Insurance Exchange of Los Angeles, California

TOPICS

jury instructions · instructions objections · harmless error · standard of review · insurance coverage

PRACTICE AREAS

Property insurance | Insurance coverage | Civil appeals

QUESTIONS PRESENTED

1. Whether the trial court erred by giving an instruction stating that circumstantial evidence is usually the only evidence available in arson cases and describing the circumstances in which persons allegedly burn property for insurance proceeds.
2. Whether the trial court erred by refusing the Smiths' proposed instructions concerning fires of unknown origin, the sufficiency of circumstantial evidence, and proof of criminal intent or an intentional act.

HOLDINGS

1. Instruction No. 12 was an abstract statement that was not a statement of law and unduly emphasized certain facts and the insurer's arson theory. Giving the instruction constituted prejudicial error requiring reversal and a new trial.
2. The trial court properly refused the proposed instruction stating that a fire of unknown origin creates a presumption that it was not criminal in origin, because no such presumption exists and the instruction would be misleading.
3. The trial court properly refused the proposed instruction imposing a particular sufficiency standard on circumstantial evidence because it was not a correct statement of law and would tend to mislead the jury.
4. The trial court properly refused the proposed instruction concerning proof of criminal intent or an intentional act through circumstantial evidence because the cited case did not support it and the instruction would tend to mislead the jury.

KEY QUOTATIONS

> *"Here, instruction No. 12 was an abstract statement that was not a statement of the law and, in any event, unduly emphasized certain facts of the case."* (538)

> *"No presumption is created because a fire is of unknown origin."* (538)

> *"For the reasons set forth herein, we reverse the judgment of the trial court and remand the cause for a new trial."* (538)

FACTUAL BACKGROUND

The Smiths purchased an unoccupied house in Guide Rock, Nebraska, in November 1997 and obtained a homeowner's policy providing $84,000 in benefits if the house was totally destroyed. The policy excluded coverage for an insured who directly caused or arranged for a loss to obtain insurance proceeds. A fire began near a wood-burning stove at approximately 2:20 a.m. on January 11, 1998, completely destroying the house. After investigating, Fire Insurance Exchange denied coverage, asserting that the Smiths had intentionally started the fire, and the jury returned a verdict for the insurer.

PROCEDURAL HISTORY

The Smiths purchased a house and obtained a homeowner's insurance policy from Fire Insurance Exchange. After the house was destroyed by fire and the insurer denied coverage on the ground that the fire had been intentionally set, the Smiths sued in the District Court for Webster County. A jury returned a verdict for Fire Insurance Exchange. The Nebraska Supreme Court reversed because the trial court gave a prejudicial jury instruction concerning arson and circumstantial evidence, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for a new trial. The opinion does not provide additional specific instructions beyond the determination that instruction No. 12 should not be given.

CASES CITED

- Pleiss v. Barnes, 260 Neb. 770, 619 N.W.2d 825 (2000)
- Morris v. Rochester Midland Corp., 259 Neb. 870, 612 N.W.2d 921 (2000)
- Smith v. Paoli Popcorn Co., 260 Neb. 460, 618 N.W.2d 452 (2000)
- Heady v. Farmers Mut. Ins. Co., 217 Neb. 172, 349 N.W.2d 366 (1984)
- Weiner v. Aetna Ins. Co., 127 Neb. 572, 256 N.W. 71 (1934)