

MISSOURI COURT OF APPEALS

Kewanee Oil Co. v. Remmert-Werner, Inc.

508 S.W.2d 23 (Mo. App. 1974) · Decided February 13, 1974

SUMMARY

The plaintiff sought damages for aircraft damage allegedly caused by negligent repair and maintenance of the landing gear and warning system, alternatively alleging faulty manufacture. The Missouri appellate court upheld contributory-negligence instructions concerning the pilot’s knowledge of an unreliable gear-warning signal and failure to use available backup procedures. The court also rejected challenges to the jury’s inspection of documentary exhibits and affirmed the judgment for defendants.

CASE DETAILS

COURT	Missouri Court of Appeals
WRITING FOR THE COURT	Clemens, Acting Presiding Judge; McMillian, Judge; Gunn, Judge
JURISDICTION	Missouri
DECIDED	February 13, 1974
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a jury verdict and judgment for defendants in an action seeking damages for negligent repair and maintenance of an aircraft landing gear and, alternatively, faulty manufacture of the landing gear.
STANDARD OF REVIEW	The court reviewed the challenged jury instructions for whether, viewed in their entirety, they assumed disputed facts or were calculated to confuse the jury. It reviewed the evidentiary and exhibit-inspection claims for demonstrated reversible or prejudicial error, applying the rule that omitted exhibits are presumed favorable to the trial court's ruling and unfavorable to the appellant.
PRECEDENTIAL VALUE	published Missouri Court of Appeals opinion
PARTIES	Kewanee Oil Company v. Remmert-Werner, Inc., North American Rockwell Corporation

TOPICS

- contributory negligence
- jury instructions
- evidence
- harmless error
- appellate procedure

PRACTICE AREAS

torts

evidence

civil procedure

QUESTIONS PRESENTED

1. Whether the contributory-negligence instructions improperly assumed disputed facts concerning the unreliability of the landing-gear warning signal.
2. Whether the trial court erred by permitting the jury to inspect defendants' Exhibits B and G, which plaintiff characterized as containing hearsay, conclusions, self-serving statements, or other prejudicial material, and whether any such error was reversible.

HOLDINGS

1. The contributory-negligence instructions did not improperly assume disputed facts. Read in their entirety, and particularly in light of their prefatory 'if you believe' language, they required the jury to determine from the evidence whether the pilot knew or should have known that the warning signal was malfunctioning and unreliable.
2. Plaintiff failed to demonstrate reversible error in permitting the jury to inspect Exhibits B and G. Because the exhibits were omitted from the appellate record, their intendment and content were taken as favorable to the trial court's ruling and unfavorable to plaintiff; the record also did not establish prejudice.

KEY QUOTATIONS

"The crucial issue presented by the instructions was whether a reasonably prudent pilot should have known under the circumstances that the signal was not reliable." (26)

"The key to determining the sufficiency of an instruction under attack for assuming facts is whether in its entirety the instruction would tend to confuse the jury." (26)

"the intendment and content of such exhibits will be taken as favorable to the trial court's ruling and as unfavorable to appellant." (27)

FACTUAL BACKGROUND

On April 14, 1967, the retractable right-wing landing gear of Kewanee Oil's airplane collapsed during landing at Chicago's O'Hare Airport when a downlock pin failed to engage. The resulting collision damaged the airplane by approximately \$132,000. Remmert-Werner had inspected and adjusted a switch associated with the landing-gear warning system one week earlier, and the parties disputed whether the pilot received indications that should have alerted him to an unreliable warning system and prompted use of available backup procedures.

PROCEDURAL HISTORY

Kewanee Oil sued Remmert-Werner, Inc. and North American Rockwell Corporation for \$132,000 in aircraft damage. The trial court submitted contributory-negligence instructions and permitted the jury to inspect

defendants' Exhibits B and G. The jury returned a verdict for defendants, judgment was entered accordingly, and Kewanee Oil appealed.

DISPOSITION

affirmed

CASES CITED

- Anderson v. Welty Brothers Sales Pavilion, 334 S.W.2d 132 (Mo. App. 1960)
- Sides v. Contemporary Homes, Inc., 311 S.W.2d 117 (Mo. App. 1958)
- Lewis v. Watkins, 297 S.W.2d 595 (Mo. App. 1957)
- Bidleman v. Morrison Motor Freight, 273 S.W.2d 745 (Mo. App. 1955)
- Pierce v. St. Louis Public Service Co., 380 S.W.2d 943 (Mo. App. 1964)
- Price v. Seidler, 408 S.W.2d 815 (Mo. 1966)
- Bledsoe v. Northside Supply and Development Co., 429 S.W.2d 727 (Mo. 1928)
- Bennette v. Hader, 337 Mo. 977, 87 S.W.2d 413 (1935)
- Stanziale v. Musick, 370 S.W.2d 261 (Mo. 1962)
- Lange v. Baker, 377 S.W.2d 5 (Mo. App. 1964)
- Jefferson v. Biggar, 416 S.W.2d 933 (Mo. 1967)

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