

SUPREME COURT OF ALASKA

Bartek v. State, Department of Natural Resources, Division of Forestry

31 P.3d 100 (Alaska 2001) · No. Nos. S-9084, S-9263 · Decided September 21, 2001

SUMMARY

The Alaska Supreme Court reviewed a class action brought by landowners alleging negligent firefighting by the State of Alaska's Division of Forestry during the Miller's Reach Fire. Relying on its related decision in Angnabooguk, the court affirmed that the Division owed a duty of care and that discretionary function immunity did not bar the claims. The court remanded for reconsideration of class certification under Alaska Civil Rule 23.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Fabe, Chief Justice; Matthews, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	September 21, 2001
DOCKET	Nos. S-9084, S-9263
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal and cross-appeal from orders denying one motion to dismiss, granting a second motion to dismiss based on discretionary-function immunity, and certifying a plaintiff class in a negligence action arising from state firefighting activities.
STANDARD OF REVIEW	Class certification is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Stephen A. Bartek, Philip W. Hill, Ed Paquette, Anna Von Reitz, Franchesca M. Cogdill, Bert Kleinenberg, Marlon R. Williams v. State of Alaska, Department of Natural Resources, Division of Forestry

TOPICS

- class actions
- motions to dismiss
- civil procedure
- appellate procedure
- negligence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the superior court abused its discretion by certifying the plaintiff class without first permitting discovery or conducting an evidentiary hearing.
2. Whether the superior court should reconsider whether the proposed class satisfied Alaska Civil Rule 23.
3. Whether the State owed the plaintiffs a duty of care.
4. Whether discretionary-function immunity under AS 09.50.250 barred the plaintiffs' negligent-firefighting claims.

HOLDINGS

1. An evidentiary hearing or discovery is not always required before class certification. It is within the superior court's discretion to determine whether factual disputes warrant discovery or an evidentiary hearing before deciding certification.
2. The Supreme Court declined to resolve the merits of class certification at that stage and remanded for the superior court to reconsider whether the Rule 23 requirements were met, including numerosity, typicality, adequacy of representation, predominance, and superiority.
3. The State owed the plaintiffs a duty of care in connection with the alleged negligent firefighting activities.
4. AS 09.50.250 did not immunize all of the plaintiffs' alleged negligent-firefighting claims, so dismissal on discretionary-function immunity grounds was improper.

KEY QUOTATIONS

“Therefore, an evidentiary hearing or discovery is not always required before class certification; it is up to the trial court to determine whether there are factual disputes which should be resolved at an evidentiary hearing after discovery.” (31 P.3d at 103)

“It is within the discretion of the superior court to decide whether to hold an evidentiary hearing or permit discovery before granting class certification.” (31 P.3d at 103)

FACTUAL BACKGROUND

The Miller's Reach Fire burned more than 37,000 acres in Alaska's Matanuska-Susitna Valley from June 2 through June 15, 1996. The State's Division of Forestry responded to the fire and took control of firefighting operations from local fire departments. Landowners whose homes and property were damaged sued, alleging that the State's firefighting activities were negligently conducted.

PROCEDURAL HISTORY

Landowners whose property was damaged in the Miller's Reach Fire sued the State, alleging negligent firefighting. The superior court certified a plaintiff class, denied the State's motion to dismiss based on lack of duty, and granted its motion to dismiss under the discretionary-function immunity provision of the Alaska Tort

Claims Act, AS 09.50.250. The landowners appealed, and the State cross-appealed the duty ruling and class certification. The Supreme Court affirmed the denial of the duty-based motion, reversed the immunity dismissal, and remanded class certification for further consideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirm the denial of the duty-based motion to dismiss, reverse the dismissal based on discretionary-function immunity, and remand for the superior court to reconsider class certification, including whether further discovery or an evidentiary hearing is required and whether the requirements of Alaska Civil Rule 23 are satisfied.

CASES CITED

- *Angnabooguk v. State, Department of Natural Resources, Division of Forestry*, 26 P.3d 447 (Alaska 2001)
- *State, Department of Revenue v. Andrade*, 23 P.3d 58, 65 (Alaska 2001)
- *Nolan v. Sea Airmotive, Inc.*, 627 P.2d 1035, 1041 (Alaska 1981)
- *In re American Medical Systems, Inc.*, 75 F.3d 1069, 1079-1086 (6th Cir. 1996)
- *Chateau de Ville Productions, Inc. v. Tams-Witmark Music Library, Inc.*, 586 F.2d 962, 966 (2d Cir. 1978)
- *Walker v. World Tire Corp.*, 563 F.2d 918, 921 (8th Cir. 1977)
- *Morrison v. Booth*, 730 F.2d 642, 643-644 (11th Cir. 1984)
- *Satterwhite v. City of Greenville, Tex.*, 578 F.2d 987, 993 (5th Cir. 1978)
- *McGowan v. Faulkner Concrete Pipe Co.*, 659 F.2d 554, 559 (5th Cir. Unit A Oct. 1981)
- *Weld v. Glaxo Wellcome Inc.*, 434 Mass. 81, 746 N.E.2d 522, 527-529 (2001)
- *In re Domestic Air Transportation Antitrust Litigation*, 137 F.R.D. 677, 682 n.4 (N.D. Ga. 1991)
- *Ex parte First National Bank of Jasper*, 717 So. 2d 342, 346 (Ala. 1997)
- *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147 (1982)
- *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 380 (Mo. App. 1997)
- *Martin v. Shell Oil Co.*, 198 F.R.D. 580, 590 (D. Conn. 2000)
- *In re Jackson National Life Insurance Co. Premium Litigation*, 193 F.R.D. 505, 508 (W.D. Mich. 2000)
- *In re Visa Check/Mastermoney Antitrust Litigation*, 192 F.R.D. 68, 79 (E.D.N.Y. 2000)
- *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997)
- *Local Joint Executive Board of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001)
- *Hawker v. Consovoy*, 198 F.R.D. 619, 626 (D.N.J. 2001)
- *Begley v. Academy Life Insurance Co.*, 200 F.R.D. 489, 496 (N.D. Ga. 2001)
- *Warner v. Waste Management, Inc.*, 36 Ohio St. 3d 91, 521 N.E.2d 1091, 1098 n.9 (1988)

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