

SUPREME COURT OF NORTH CAROLINA

Eldridge v. Church Oil Co., 224 N.C. 457

31 S.E.2d 381 (1944) · Decided September 20, 1944

SUMMARY

The court considered whether a complaint adequately alleged that Gulf Oil Corporation and Church Oil Company were vicariously liable for the wrongful death caused by their alleged employee's operation of a delivery truck during a personal altercation. The court held that the employee's conduct was outside the scope and course of his employment and unrelated to the companies' business, and affirmed the sustaining of the defendants' demurrers.

CASE DETAILS

|                       |                                                                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of North Carolina                                                                                                                                                                      |
| WRITING FOR THE COURT | Devin                                                                                                                                                                                                |
| JURISDICTION          | North Carolina                                                                                                                                                                                       |
| DECIDED               | September 20, 1944                                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | The plaintiff appealed after the trial court sustained demurrers filed by Gulf Oil Corporation and Church Oil Company for failure to state facts sufficient to constitute a cause of action.         |
| STANDARD OF REVIEW    | De novo review of whether the complaint alleged facts sufficient to constitute a cause of action, accepting well-pleaded factual allegations but disregarding conclusory allegations and deductions. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                       |
| PARTIES               | Eldridge v. Church Oil Company, Gulf Oil Corporation, Mayberry                                                                                                                                       |

TOPICS

- wrongful death
- vicarious liability
- respondeat superior
- motions to dismiss
- civil procedure

PRACTICE AREAS

- torts
- wrongful death
- employment liability
- civil procedure

QUESTIONS PRESENTED

1. Whether the complaint alleged facts showing that Lowery's operation of the truck during the personal altercation was within the scope or course of his employment or in furtherance of the business of Gulf Oil Corporation or Church Oil Company.
2. Whether Gulf Oil Corporation and Church Oil Company could be held liable for Lowery's alleged tortious conduct based on the facts pleaded.

#### **HOLDINGS**

1. The complaint's factual allegations failed to show that Lowery's tortious operation of the truck during the personal fight was within the scope or course of his employment or in furtherance of the business of Gulf Oil Corporation or Church Oil Company.
2. The complaint failed to state a cause of action against Gulf Oil Corporation or Church Oil Company, so the demurrers were properly sustained.

#### **KEY QUOTATIONS**

*"The transaction as stated was entirely foreign to the business of Lowery's principals, and cannot be held in law to impose liability upon either."* (459)

#### **FACTUAL BACKGROUND**

Lowery, an employee of Church Oil Company, was delivering Gulf Oil Corporation products to a service station operated by Mayberry. During a personal altercation between Mayberry and the decedent, Mayberry asked Lowery to help him escape. Lowery drove a truck while Mayberry and the decedent struggled in or near the cab, continued driving after seeing Mayberry strike the decedent, and fatally ran over the decedent. The complaint alleged that Lowery was acting as an agent and within the scope of employment, but the court treated those assertions as legal conclusions inconsistent with the material facts alleged.

#### **PROCEDURAL HISTORY**

The plaintiff brought a wrongful-death action alleging negligent or willful conduct by the defendants. Defendant Mayberry answered, while Gulf Oil Corporation and Church Oil Company demurred. The trial court sustained the demurrers, and the Supreme Court of North Carolina affirmed.

#### **DISPOSITION**

affirmed

#### **CASES CITED**

- *Ferguson v. Spinning Co.*, 196 N.C. 614, 146 S.E. 597
- *Jackson v. Scheiber*, 209 N.C. 441, 184 S.E. 17
- *Parrish v. Mfg. Co.*, 211 N.C. 7, 188 S.E. 817
- *Snow v. DeButts*, 212 N.C. 120, 193 S.E. 224
- *Parrott v. Kantor*, 216 N.C. 584, 6 S.E.2d 40

- Hammond v. Eckerd's, 220 N.C. 596, 18 S.E.2d 151
- Gallop v. Clark, 188 N.C. 186, 124 S.E. 145
- Ashley v. Chevrolet Co., 222 N.C. 25, 21 S.E.2d 834

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