

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Holik v. Consolidation Coal Co.

214 W. Va. 458 (2003) · Decided November 21, 2003

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a judgment on a jury verdict finding Consolidation Coal Company not liable for injuries sustained during the dismantling of a coal tippie. The court upheld summary judgment rejecting the plaintiffs’ negligent-selection claim and concluded that they had a fair opportunity to present claims concerning Consol’s monitoring, supervision, and control of the dismantling process. The court also upheld the transfer of the case to Monongalia County.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	November 21, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a circuit court judgment entered on a jury verdict finding Consolidation Coal Company not liable for negligence that proximately caused the decedents' injuries. Plaintiffs challenged partial summary judgment on their negligent-selection claims and the transfer of venue.
STANDARD OF REVIEW	Summary judgment orders are reviewed de novo. Summary judgment is proper only when there is no genuine issue of fact to be tried and further factual inquiry is not necessary to clarify the application of law.
PRECEDENTIAL VALUE	published opinion
PARTIES	Edward Holik, Jr., administrator of the estate of Edward Holik, deceased, D. Paulette Byers, administratrix of the estate of Robert Moon, deceased v. Consolidation Coal Company

TOPICS

- negligence
- summary judgment
- venue
- standard of review
- appellate procedure

PRACTICE AREAS

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly granted Consolidation Coal summary judgment on plaintiffs' negligent-selection claims.
2. Whether plaintiffs received a fair opportunity at trial to present evidence that Consolidation Coal was negligent in monitoring, supervising, and controlling the demolition.
3. Whether the transfer of the case from Mingo County to Monongalia County was a proper exercise of the circuit court's discretion.

HOLDINGS

1. The circuit court did not err in granting Consolidation Coal summary judgment on the negligent-selection claims. Although West Virginia law had recognized the possibility that a selecting party might owe a duty of due care to an employee of a negligently selected contractor in some circumstances, the record did not establish circumstances warranting such a claim here.
2. Plaintiffs received a fair trial because the general negligence question, the evidence presented, and the jury instructions concerning Consolidation Coal's duty to provide a safe place to work allowed the jury to consider Consolidation Coal's responsibility in connection with the dismantling and removal process.
3. The transfer of the case to Monongalia County, where the accident occurred, was a proper exercise of the circuit court's discretion.

KEY QUOTATIONS

“A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” (at 460)

“We therefore conclude that the circuit court did not err in granting summary judgment on the negligent selection claim, and that the appellants received a fair trial.” (at 460)

FACTUAL BACKGROUND

Consolidation Coal Company contracted with Iron & Steel Processing to dismantle and remove a coal tippie owned by Consolidation Coal in Monongalia County, West Virginia. Edward Holik was injured and Robert Moon was killed when the tippie collapsed during demolition. Plaintiffs alleged that Consolidation Coal negligently selected Iron & Steel Processing and negligently monitored, supervised, and controlled the dismantling operation.

PROCEDURAL HISTORY

The decedents, employees of Iron & Steel Processing, were injured when a coal tippie owned by Consolidation Coal Company collapsed during demolition. Plaintiffs sued Consolidation Coal and several other defendants in Mingo County; the case was transferred to Monongalia County. The circuit court granted Consolidation Coal

partial summary judgment on negligent-selection claims, denied summary judgment on claims concerning Consolidation Coal's conduct during demolition, and entered judgment for Consolidation Coal after a jury found no proximate negligence. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Russell v. Bush & Burchett, 210 W. Va. 699, 559 S.E.2d 36 (2001)
- Bagley v. Insight Communications, 658 N.E.2d 584 (Ind. 1995)
- Sievers v. McClure, 746 P.2d 885 (Alaska 1987)
- Peneschi v. National Steel Corp., 170 W. Va. 511, 295 S.E.2d 1 (1982)
- Kerns v. Slider Angering, 202 W. Va. 548, 505 S.E.2d 611 (1997) (per curiam)

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