

COURT OF APPEALS OF GEORGIA

Dukes v. Burke, 139 Ga. App. 583

228 S.E.2d 729 (Ga. Ct. App. 1976) · No. 52486, 52487 · Decided September 16, 1976

SUMMARY

The Georgia Court of Appeals held that evidence concerning the possible re-ignition of cotton during transport created a jury issue on the defendant trucker's negligence, making directed verdict improper. The court also held that the trial court abused its discretion by opening a third-party defendant's default based solely on misunderstanding of third-party practice and unfamiliarity with the law. The judgments were reversed in both related appeals.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	McMurray, Judge; Marshall; McMurray; Smith
JURISDICTION	Georgia
DECIDED	September 16, 1976
DOCKET	52486, 52487
DISPOSITION	reversed
PROCEDURAL POSTURE	Dukes appealed after the trial court directed a verdict for Burke and denied Dukes's motion for a new trial. Burke cross-appealed the directed verdict and judgment in favor of third-party defendant Hendley, as well as the order opening Hendley's default.
STANDARD OF REVIEW	A directed verdict must be viewed by construing the evidence most strongly in favor of the party opposing the motion. Questions of negligence are ordinarily for the jury. An order opening a default judgment is reviewed for abuse of the trial court's legal discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the Court of Appeals of Georgia
PARTIES	Murray Dukes, Burke on cross-appeal v. Burke, Hendley Transfer Co. on the third-party claim

TOPICS

- negligence
- default judgment
- third party practice
- damages
- civil procedure

PRACTICE AREAS

torts

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the evidence created a jury issue on Burke's negligence in transporting cotton that may still have been burning.
2. Whether the trial court abused its discretion by opening Hendley's default based solely on pleadings asserting misunderstanding of third-party practice, unfamiliarity with the law, and lack of retained counsel.
3. Whether the measure of damages in this ex delicto action was for the jury to determine.
4. Whether the directed verdict for the third-party defendant was proper when an issue of fact remained in the event Burke was held liable.

HOLDINGS

1. The trial court erred in directing a verdict for Burke because the evidence permitted an inference that the cotton was still burning when it departed and that the fire was negligently rekindled during transport.
2. The trial court abused its discretion by opening Hendley's default because the pleadings showed only a misunderstanding of third-party practice, unfamiliarity with the law, and lack of retained counsel, without supporting facts sufficient to authorize opening the default.
3. Because the action was ex delicto, the measure of damages was for the jury to determine based on the evidence.
4. The trial court erred in directing a verdict for Hendley because a factual issue remained for the jury if Burke were found liable.

KEY QUOTATIONS

"Ignorance of the law is never an excuse for inaction." (139 Ga. App. at 585)

"Questions of negligence are peculiarly a matter for jury determination." (139 Ga. App. at 585)

FACTUAL BACKGROUND

Johnson, doing business as Hendley Transfer Co., received cotton for transport from Millen to Augusta. The cotton caught fire while parked overnight, and after damaged bales were separated, Burke transported the remaining cotton to a salvage company. Approximately 35 miles into the trip, the cotton caught fire again and the fire spread to a tenant house and 13 acres of land owned by Murray Dukes.

PROCEDURAL HISTORY

After cotton being transported by Burke caught fire and damaged Dukes's tenant house and 13 acres of land, Dukes sued Burke for property damages. Burke filed a third-party action against Hendley. The trial court

directed verdicts for Burke and Hendley, denied Dukes's motion for a new trial, and opened Hendley's default. The Court of Appeals reversed in both cases.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgments and rulings were reversed in both cases, requiring further proceedings consistent with the opinion, including jury determination of negligence and damages and reconsideration of the third-party claim and default.

CASES CITED

- Murray v. Gamble, 127 Ga. App. 855, 195 S.E.2d 461
- Kesler v. Kesler, 219 Ga. 592, 134 S.E.2d 811
- Kilgore v. Nasworthy, 124 Ga. App. 261, 262 (6), 183 S.E.2d 481
- Lincoln Property Co. No. 4 of Atlanta v. Stasco Plumbing, Inc., 130 Ga. App. 767, 768, 204 S.E.2d 449
- Garrett v. Royal Bros. Co., 225 Ga. 533, 536, 170 S.E.2d 294
- Seaboard A. L. R. v. Blackwell, 16 Ga. App. 504 (3), 85 S.E. 686
- Beckham v. Seaboard A. L. R., 127 Ga. 550, 534, 56 S.E. 638
- Houston v. Lowes of Savannah, 235 Ga. 201, 219 S.E.2d 115
- Johnson v. Durrence, 136 Ga. App. 439, 440, 221 S.E.2d 652
- Strickland v. Galloway, 111 Ga. App. 683, 143 S.E.2d 3
- Fitzgerald v. Morgan, 200 Ga. 651, 655, 38 S.E.2d 171
- Prince v. Friedman, 202 Ga. App. 136 (2), 42 S.E.2d 434
- First Fidelity Ins. Corp. v. Busbia, 128 Ga. App. 485, 197 S.E.2d 396

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