

NEBRASKA SUPREME COURT

Susman v. Kearney Towing & Repair Center, Inc.

Susman v. Kearney Towing & Repair Ctr., 310 Neb. 910 (2022) · No. No. S-21-277 · Decided February 11, 2022

SUMMARY

The Nebraska Supreme Court held that the plaintiffs’ ordinary negligence claim against a tire repair company accrued when they were injured in the tire-related accident, not when the tire was installed. Because the action was filed within four years of the accident, it was not barred by Neb. Rev. Stat. § 25-207. The court reversed the summary judgment and remanded for further proceedings.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	February 11, 2022
DOCKET	No. S-21-277
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from the district court's order granting the defendant's motion for summary judgment on the ground that their ordinary negligence claim was barred by the statute of limitations.
STANDARD OF REVIEW	The appellate court reviews summary judgment de novo, affirming when the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and the moving party is entitled to judgment as a matter of law. The evidence is viewed in the light most favorable to the nonmoving party, who receives the benefit of all reasonable inferences.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Rysta Leona Susman, Shane Allen Loveland, Jacob Summers v. Kearney Towing & Repair Center, Inc.

TOPICS

- statute of limitations
- negligence
- summary judgment
- appellate procedure
- standard of review

PRACTICE AREAS

torts negligence civil procedure statute of limitations

QUESTIONS PRESENTED

1. Whether an ordinary negligence cause of action under Neb. Rev. Stat. § 25-207(3) accrues when the defendant's allegedly negligent act or omission occurs or when the plaintiff suffers an actual injury giving rise to a right to institute and maintain suit.
2. Whether the plaintiffs' negligence claim was barred by the four-year statute of limitations when they filed suit within four years of the accident but more than four years after the tire installation.
3. Whether the Nebraska Supreme Court should disapprove language in *Grand Island School Dist. #2 v. Celotex Corp.* suggesting that a tort claim accrues when the defendant's act or omission occurs regardless of whether the plaintiff has yet been injured.

HOLDINGS

1. An ordinary negligence cause of action accrues, and the statute of limitations begins to run, when the plaintiff has a present right to institute and maintain suit—meaning that all elements of the claim, including actual injury and causation, have occurred. The limitations period does not begin when the defendant's allegedly negligent act occurs if the plaintiff has not yet suffered an injury.
2. The plaintiffs' negligence claim was not barred by Neb. Rev. Stat. § 25-207(3) because the claim accrued on May 1, 2015, when the tire failure caused their injuries, rather than on June 10, 2014, when Kearney Towing installed the tire.
3. The court disapproved *Grand Island School Dist. #2 v. Celotex Corp.* to the extent it could be interpreted to hold that a § 25-207(3) negligence claim accrues upon the defendant's act or omission regardless of whether the plaintiff has yet been aggrieved by that conduct.

KEY QUOTATIONS

“The universal rule of law is that the statute of limitations does not begin to run against a right of action until that right exists. The party who has the right of action has the full period of the statute in which to enforce it.” (920)

“A [plaintiff] is not required to anticipate an injury from the probable negligence of some one else. The statute of limitations does not run until the injury has been actually received.” (922)

*“To the extent the statement in *Celotex Corp.* could be interpreted as saying that the statute of limitations for claims covered by § 25-207(3) will begin to run upon the act or omission of the defendant, regardless of whether the plaintiff has yet been aggrieved by that misconduct, we find it inconsistent with other precedent and the controlling statutes and it is disapproved.”* (925-926)

FACTUAL BACKGROUND

Kearney Towing inspected, mounted, installed, and balanced used tires on a pickup truck owned by the plaintiffs' employer on June 10, 2014. On May 1, 2015, a rear tire suffered a tread separation, causing a single-vehicle

rollover that injured passengers Shane Allen Loveland and Jacob Summers. Plaintiffs filed their negligence action on April 12, 2019, within four years of the accident but more than four years after the tire installation.

PROCEDURAL HISTORY

Plaintiffs sued Kearney Towing on April 12, 2019, alleging negligence and breach of contract arising from injuries sustained in a May 1, 2015, vehicle accident caused by a tire tread separation. The district court initially denied summary judgment as to negligence, concluding that the negligence claim accrued on the date of injury, but reconsidered and held that the claim accrued when the tire was installed on June 10, 2014. The court dismissed the negligence claim as untimely, later dismissed the breach of contract and derivative third-party claims, and plaintiffs appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the district court for further proceedings after reversal of the summary judgment entered in favor of Kearney Towing.

CASES CITED

- Sundermann v. Hy-Vee, 306 Neb. 749, 947 N.W.2d 492 (2020)
- State ex rel. Labedz v. Beermann, 229 Neb. 657, 428 N.W.2d 608 (1988)
- Markel v. Glassmeyer, 137 Neb. 243, 288 N.W. 821 (1939)
- Condon v. A. H. Robins Co., 217 Neb. 60, 349 N.W.2d 622 (1984)
- Alston v. Hormel Foods Corp., 273 Neb. 422, 730 N.W.2d 376 (2007)
- Shlien v. Board of Regents, 263 Neb. 465, 640 N.W.2d 643 (2002)
- Casey v. Levine, 261 Neb. 1, 621 N.W.2d 482 (2001)
- Komar v. State, 299 Neb. 301, 908 N.W.2d 610 (2018)
- Andersen v. A.M.W., Inc., 266 Neb. 238, 665 N.W.2d 1 (2003)
- Egan v. Stoler, 265 Neb. 1, 653 N.W.2d 855 (2002)
- Cavanaugh v. City of Omaha, 254 Neb. 897, 580 N.W.2d 541 (1998)
- Association of Commonwealth Claimants v. Moylan, 246 Neb. 88, 517 N.W.2d 94 (1994)
- Central States Resources v. First Nat. Bank, 243 Neb. 538, 501 N.W.2d 271 (1993)
- Hoffman v. Reinke Mfg. Co., 227 Neb. 66, 416 N.W.2d 216 (1987)
- Lake v. Piper, Jaffray & Hopwood Inc., 219 Neb. 731, 365 N.W.2d 838 (1985)
- Kearney Clinic Bldg. Corp. v. Weaver, 211 Neb. 499, 319 N.W.2d 95 (1982)
- T. S. McShane Co., Inc. v. Dominion Constr. Co., 203 Neb. 318, 278 N.W.2d 596 (1979)
- Barney v. City of Lincoln, 144 Neb. 537, 13 N.W.2d 870 (1944)
- Bohrer v. Davis, 94 Neb. 367, 143 N.W. 209 (1913)

- Criswell v. Criswell, 101 Neb. 349, 163 N.W. 302 (1917)
- Wallace v. Kato, 549 U.S. 384, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007)
- Anthony K. v. Nebraska Dept. of Health & Human Servs., 289 Neb. 540, 855 N.W.2d 788 (2014)
- Emel v. Standard Oil Co., 117 Neb. 418, 220 N.W. 685 (1928)
- Henderson v. Forman, 240 Neb. 939, 486 N.W.2d 182 (1992)
- Westover v. Hoover, 94 Neb. 596, 143 N.W. 946 (1913)
- Wilke v. Woodhouse Ford, 278 Neb. 800, 774 N.W.2d 370 (2009)
- Thomas v. Board of Trustees, 296 Neb. 726, 895 N.W.2d 692 (2017)
- A.W. v. Lancaster Cty. Sch. Dist. 0001, 280 Neb. 205, 784 N.W.2d 907 (2010)
- Hodson v. Taylor, 290 Neb. 348, 860 N.W.2d 162 (2015)
- McClelland v. Interstate Transit Lines, 142 Neb. 439, 6 N.W.2d 384 (1942)
- Zeller v. County of Howard, 227 Neb. 667, 419 N.W.2d 654 (1988)
- Talbot v. Douglas County, 249 Neb. 620, 544 N.W.2d 839 (1996)
- State v. Baltimore, 242 Neb. 562, 495 N.W.2d 921 (1993)
- Ryder Truck Rental v. Rollins, 246 Neb. 250, 518 N.W.2d 124 (1994)
- City of Springfield v. City of Papillion, 294 Neb. 604, 883 N.W.2d 647 (2016)
- Central Neb. Pub. Power Dist. v. North Platte NRD, 280 Neb. 533, 788 N.W.2d 252 (2010)
- Morse v. Chicago, B. & Q. R. Co., 81 Neb. 745, 116 N.W. 859 (1908)
- Shavlik v. Walla, 86 Neb. 768, 126 N.W. 376 (1910)
- Chicago, R. I. & P. R. Co. v. Andreesen, 62 Neb. 456, 87 N.W. 167 (1901)
- Grand Island School Dist. #2 v. Celotex Corp., 203 Neb. 559, 279 N.W.2d 603 (1979)
- Rosnick v. Marks, 218 Neb. 499, 357 N.W.2d 186 (1984)
- Guinn v. Murray, 286 Neb. 584, 837 N.W.2d 805 (2013)
- Carruth v. State, 271 Neb. 433, 712 N.W.2d 575 (2006)
- Berntsen v. Coopers & Lybrand, 249 Neb. 904, 546 N.W.2d 310 (1996)
- St. Paul Fire & Marine Ins. Co. v. Touche Ross & Co., 244 Neb. 408, 507 N.W.2d 275 (1993)
- In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020)
- Teater v. State, 252 Neb. 20, 559 N.W.2d 758 (1997)
- Williams v. Elias, 140 Neb. 656, 1 N.W.2d 121 (1941)