

SUPREME COURT OF KANSAS

Double M Construction, Inc. v. State Corp. Commission, 288 Kan. 268

202 P.3d 7 (2009) · No. No. 100,312 · Decided February 6, 2009

SUMMARY

The Kansas Supreme Court affirmed a Kansas Corporation Commission penalty against Double M Construction for excavating near an underground gas pipeline without independently notifying Kansas One Call. The court held that Double M was an “excavator” under the Kansas Underground Utility Damage Prevention Act and could not contractually delegate its statutory notification duty. The court also rejected Double M’s fairness, freedom-of-contract, and vagueness challenges.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Rosen, J.; Standridge, J., assigned
JURISDICTION	Kansas
DECIDED	February 6, 2009
DOCKET	No. 100,312
DISPOSITION	affirmed
PROCEDURAL POSTURE	Double M appealed a Shawnee County District Court judgment affirming a Kansas Corporation Commission order finding it liable under the Kansas Underground Utility Damage Prevention Act and imposing a \$25,000 civil penalty. The Kansas Supreme Court assumed jurisdiction following Double M's motion to transfer from the Court of Appeals.
STANDARD OF REVIEW	De novo review applies to a district court decision based on documents and stipulated facts; statutory interpretation and constitutional challenges are questions of law subject to unlimited or de novo review. Agency statutory interpretations are not binding on the courts.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Double M Construction, Inc. v. State Corporation Commission

TOPICS

statutory interpretation

administrative law

construction law

void for vagueness

contracts

PRACTICE AREAS

administrative law

construction law

statutory interpretation

constitutional law

contracts

QUESTIONS PRESENTED

1. Whether Double M was an excavator subject to the notification duties and penalties of the Kansas Underground Utility Damage Prevention Act despite its contractual allocation of utility-location responsibilities to Double J Pipeline.
2. Whether the statutory duties imposed on Double M could be delegated or avoided through contract or equitable considerations.
3. Whether imposing the statutory duty and penalty on Double M violated freedom-of-contract principles.
4. Whether the statutory definition of excavator was unconstitutionally vague.
5. Whether Double J Pipeline's notice to Kansas One Call satisfied Double M's separate statutory notification obligation.

HOLDINGS

1. A corporation that directly engages in excavation activities in Kansas qualifies as an excavator under K.S.A. 66-1802(d) and is independently required to notify underground-facility operators before excavating.
2. Unless a statute expressly or implicitly permits delegation, statutory duties imposed on a party generally may not be delegated by contract; the Underground Utility Damage Prevention Act contains no delegation provision.
3. Equitable considerations, contractual allocation of responsibility, and common-law negligence principles do not excuse a violation of a directly applicable statutory duty.
4. The legislature may use its police power to impose a public-safety duty that private parties cannot contractually waive or transfer to another party.
5. The statutory definition of excavator is not unconstitutionally vague because an ordinary person exercising common sense can understand that a party operating excavation equipment directly engages in excavation and must comply with the notification requirement.

KEY QUOTATIONS

“The statutory language applies clearly and unambiguously to Double M.” (at 12)

“Unless a statute expressly or implicitly allows for delegation, statutory duties imposed on one party generally may not be delegated by contract to another party.” (at 13)

“The stipulated facts show that the excavator, Double M, did not make the required telephone call.” (at 15)

FACTUAL BACKGROUND

Double M Construction, an Oklahoma corporation and subcontractor, directly excavated near Mound Valley, Kansas, under a contract with Double J Pipeline. Although Double J contacted Kansas One Call, a mapping error delayed proper notification, and Double M did not independently contact Kansas One Call before excavating. Double M's equipment ruptured a 20-inch high-pressure natural gas transmission line, causing a fatality and property damage.

PROCEDURAL HISTORY

The Corporation Commission issued a show-cause order after Double M's excavation equipment ruptured a high-pressure natural gas pipeline. Following stipulated facts, the Commission found Double M at fault and imposed a \$25,000 penalty. The Commission denied reconsideration, the Shawnee County District Court affirmed on judicial review, and Double M appealed. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Klein v. Oppenheimer & Co., 281 Kan. 330, 336, 130 P.3d 569 (2006)
- Shade v. Wheatcraft Industries, Inc., 248 Kan. 531, 541, 809 P.2d 538 (1991)
- In re Harris Testamentary Trust, 275 Kan. 946, 951, 69 P.3d 1109 (2003)
- Genesis Health Club, Inc. v. City of Wichita, 285 Kan. 1021, 1031, 181 P.3d 549 (2008)
- State v. Stallings, 284 Kan. 741, 742, 163 P.3d 1232 (2007)
- In re K.M.H., 285 Kan. 53, 79, 169 P.3d 1025 (2007), cert. denied, 555 U.S. 1090 (2008)
- Denning v. KPERS, 285 Kan. 1045, 1048, 180 P.3d 564 (2008)
- State v. Kleypas, 282 Kan. 560, 564, 147 P.3d 1058 (2006)
- State v. Paul, 285 Kan. 658, 661-62, 175 P.3d 840 (2008)
- Pownall v. Connell, 155 Kan. 128, Syl. ¶ 1, 122 P.2d 730 (1942)
- Rambo v. Bank, 88 Kan. 257, 259, 128 P. 182 (1912)
- U.S.D. No. 207 v. Northland Nat'l Bank, 20 Kan. App. 2d 321, 333, 887 P.2d 1138 (1994)
- Blue v. McBride, 252 Kan. 894, 915, 850 P.2d 852 (1993)
- State, ex rel. v. City of Topeka, 176 Kan. 240, 252, 270 P.2d 270 (1954)
- Balagna v. Shawnee County, 233 Kan. 1068, Syl. ¶ 4, 668 P.2d 157 (1983)
- Williamson v. Amrani, 283 Kan. 227, 242, 152 P.3d 60 (2007)
- Cheek v. United States, 498 U.S. 192, 199 (1991)
- State v. Young, 228 Kan. 355, 360, 614 P.2d 441 (1980)
- State ex rel. Murray v. Palmgren, 231 Kan. 524, 536, 646 P.2d 1091 (1982)
- Hartford Accident Co. v. Nelson Co., 291 U.S. 352, 360 (1934)

- West Coast Hotel Co. v. Parrish, 300 U.S. 379, 391-92 (1937)
- State v. Mwaura, 4 Kan. App. 2d 738, 740-41, 610 P.2d 662 (1980)
- State ex rel. Six v. Kansas Lottery, 286 Kan. 557, 562, 186 P.3d 183 (2008)
- Martin v. Kansas Department of Revenue, 285 Kan. 625, 629-30, 176 P.3d 938 (2008)
- Boatright v. Kansas Racing Commission, 251 Kan. 240, 243, 834 P.2d 368 (1992)

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