

SUPREME COURT OF APPEALS OF WEST VIRGINIA

McCormick v. Walmart Stores, Inc., 215 W. Va. 679

600 S.E.2d 576 (2004) · No. No. 31396 · Decided June 30, 2004

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed the dismissal of the Town of Lewisburg from a lawsuit alleging stormwater damage to the plaintiffs’ property associated with Walmart’s construction and the Town’s drainage systems. The court reversed and remanded, holding that the complaint stated a potentially actionable claim and that the Town’s permitting immunity did not necessarily bar claims based on negligent management and maintenance of its own property and drainage systems. A dissent would have affirmed the dismissal.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam
JURISDICTION	West Virginia
DECIDED	June 30, 2004
DOCKET	No. 31396
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed the Circuit Court of Greenbrier County's dismissal under West Virginia Rule of Civil Procedure 12(b)(6) of the Town of Lewisburg as a defendant for failure to state a claim.
STANDARD OF REVIEW	Appellate review of an order granting a motion to dismiss is de novo. A complaint should not be dismissed under Rule 12(b)(6) unless it appears beyond doubt that the plaintiff can prove no set of facts supporting a claim for relief.
PRECEDENTIAL VALUE	Published opinion; precedential state supreme court decision.
PARTIES	Mindy McCormick, Billy McCormick, David Carroll v. Walmart Stores, Inc., RCDI Construction, Inc., West Virginia Department of Transportation, Division of Highways, Town of Lewisburg, West Virginia

TOPICS

motions to dismiss

municipal liability

nuisance

trespass

civil procedure

PRACTICE AREAS

civil procedure

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construction law

QUESTIONS PRESENTED

1. Whether the complaint stated a claim against the Town for injuries allegedly caused by stormwater originating from or passing through Town-owned property and drainage systems.
2. Whether an intervening parcel of property immunized the Town from potential nuisance or trespass liability for stormwater damage to nonadjacent property.
3. Whether the Town's licensing-function immunity under West Virginia Code § 29-12A-5(a)(9) required dismissal at the pleading stage.

HOLDINGS

1. The complaint stated a claim against the Town because West Virginia Code § 29-12A-4(c)(3) permits liability for property loss caused by a political subdivision's negligent failure to keep public grounds and aqueducts, including stormwater drainage systems, open, in repair, or free from nuisance.
2. An intervening parcel of property does not, by itself, immunize a property owner that originates or contributes to a nuisance or trespass from potential liability for resulting injuries to nonadjacent property.
3. West Virginia Code § 29-12A-5(a)(9) did not require dismissal because the complaint alleged injury caused by the Town's negligent management and maintenance of its own property and drainage systems, rather than merely by the Town's permitting or licensing decision.

KEY QUOTATIONS

“A property owner may be liable in nuisance for injuries caused by stormwater that leaves the owner's property—and the property owner is not per se immunized from such potential liability by either the fact that the stormwater previously arrived on the owner's property from another property, or by the fact that the stormwater subsequently traveled across another property before causing the injury in question.” (215 W. Va. 680)

“For simple licensing and permitting decisions, political subdivisions remain generally immune. For improper management of a subdivision's own real property systems, the subdivision is potentially liable.” (215 W. Va. 681)

FACTUAL BACKGROUND

The appellants owned land within the Town of Lewisburg. After Walmart and RCDI developed a nearby Walmart Supercenter, stormwater allegedly flowed across the Supercenter property and onto the appellants' land, causing severe property damage. The complaint alleged that the Town owned and maintained drainage systems, failed to control stormwater, and assured the appellants that it would remedy the conditions but did not do so.

PROCEDURAL HISTORY

The plaintiffs alleged that stormwater from Town-owned property and drainage systems damaged their property after construction of a Walmart Supercenter. The circuit court dismissed the Town before discovery and without considering matters outside the complaint. The Supreme Court of Appeals of West Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion.

CASES CITED

- Holbrook v. Holbrook, 196 W. Va. 720, 474 S.E.2d 900 (1996) (per curiam)
- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Chapman v. Kane Transfer Co., 160 W. Va. 530, 236 S.E.2d 207 (1977)
- Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)
- John W. Lodge Distributing Co., 161 W. Va. 603, 245 S.E.2d 157 (1978)
- Calabrese v. City of Charleston, 204 W. Va. 650, 515 S.E.2d 814 (1999)
- Carter v. Monsanto Co., 212 W. Va. 732, 575 S.E.2d 342 (2002)
- Whorton v. Malone, 209 W. Va. 384, 549 S.E.2d 57 (2001)
- Morris Assocs., Inc. v. Priddy, 181 W. Va. 588, 383 S.E.2d 770 (1989)
- Hose v. Berkeley County Planning Commission, 194 W. Va. 515, 460 S.E.2d 761 (1995)
- Hutchison v. City of Huntington, 198 W. Va. 139, 479 S.E.2d 649 (1996)
- Jordan v. City of Benwood, 42 W. Va. 312, 26 S.E. 266 (1896)