

WASHINGTON CASE UPDATE

When is an Act Negligent as a Matter of Law?

case in point...

From the Desk of Kyle D. Riley: In the vast majority of cases, whether a person was negligent is an issue of fact for the jury. There is the rare occasion, however, on which a trial court will grant summary judgment for a plaintiff after determining a defendant was negligent as a matter of law. In the following case, the Washington Court of Appeals articulates some of the key standards of negligence on its way to affirming the trial court's granting of summary judgment.

Claims Pointer: In this case arising out of an on-the-job injury, the Washington Court of Appeals upheld a trial court's granting of summary judgment on the issue of the defendant's negligence because the injury caused by the defendant's actions was within the general field of danger foreseeable to a reasonable person, and because the plaintiff did not provide any affirmative assurance of safety prior to the defendant's actions. This case provides some insight as to when summary judgment will be granted on the issue of negligence, reminding us along the way that foreseeability is an objective test, and where a reasonable person would expect harm to arise from a careless act, foreseeability can be determined as a matter of law.

Lee v. Willis Enterprises, Inc., No. 46374-1-II, Washington Court of Appeals (June 7, 2016).

Verl Lee ("Lee"), an electronics technician, was sent to repair a disabled "variable frequency drive" ("VFD"), a piece of high-voltage electrical equipment, located at a mill operated by Willis Enterprises ("Willis"). Lee turned off power to the VFD so he could disassemble it, and after he reassembled it, he turned the power back on, but it still did not start. Lee concluded the cooling fan was causing the problem, so he positioned himself in the VFD's cabinet to observe the fan. Daniel Fletcher ("Fletcher"), an employee of the mill who was assisting Lee, thought he could fix the stuck fan by hitting it with a screwdriver. In doing so, he contacted an energized part of the VFD, causing an "electrical arc blast," badly injuring Lee and rendering him permanently unemployable.

Fletcher claimed that Lee saw him holding the screwdriver and, during the 15 seconds that elapsed between his announcing he would hit the fan and the moment he did so, Lee stood in place and held the flashlight so Fletcher could see the fan. Fletcher took this as tacit endorsement of the plan. Lee did recall Fletcher saying he could hit the fan with the screwdriver, but he claimed to have only enough time to say "no, you can't" before

Fletcher inserted the screwdriver into the VFD, causing the blast.

Lee filed a complaint against Fletcher and Willis, alleging in part that Fletcher negligently inserted the screwdriver into the VFD and caused the arc and subsequent explosion that resulted in Lee's injuries. Before trial, Lee moved for summary judgment on Fletcher's negligence, contending Fletcher was negligent as a matter of law because he was not qualified to perform work on the VFD, he knew it was energized during the incident, other Willis employees admitted it would be unwise to touch an energized VFD, and Fletcher put the screwdriver into the VFD without being directed to do so by Lee. Fletcher responded that summary judgment was improper because reasonable minds could disagree both on the foreseeability of Lee's injuries and on whether Lee knew of and cooperated with the Fletcher's plan. During the hearing on the motion, Fletcher argued that a finding of negligence as a matter of law was improper because he believed his actions had been approved by Lee. The trial court granted Lee's motion, and after trial was completed, Fletcher and Willis appealed.

On appeal, Fletcher contended that the trial court erred in granting summary judgment



Contact: Kyle Riley | www.smithfreed.com | email: kriley@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

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because a jury should have determined whether Lee's injury was foreseeable. According to Fletcher, he was not negligent because he did not know that tapping the fan blade with the screwdriver posed an unreasonable risk of harm in the specific form in which it occurred. Therefore, reasonable minds could disagree as to whether he should have known that an electrical blast would occur, there was serious risk of hearing damage from such a blast, and a bystander such as Lee would be injured.

The court disagreed, pointing out that the test of foreseeability is whether the result of the act is within the general field of danger that should have been anticipated. Moreover, foreseeability is an objective test, turning on whether a reasonable person would have anticipated the risk rather than what the actor knew or should have known. Fletcher's failure to anticipate an electrical arc blast and Lee's injuries did not render the risk unforeseeable. Rather, it is foreseeable as a matter of law that serious injury could result from careless behavior while working in and around energized high-voltage electrical equipment, and an ordinary reasonable and prudent person would expect such a risk of harm could be created under those circumstances. As such, the trial court did not err in granting summary judgment.

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