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Anderson v. BNSF: Despite Confusion over FELA Claims, Verdict Will Likely Be Upheald

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RECAP. *ANDERSON V. BNSF*: DESPITE CONFUSION OVER FELA CLAIMS, VERDICT WILL LIKELY BE UPHELD

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No. DA 14-0253
Montana Supreme Court

Oral Argument: Wednesday, January 14th, 2015 at 9:30 a.m. at the Courtroom of the Montana Supreme Court, Joseph P. Mazurek Building, Helena, Montana. The matter was taken under advisement at 10:50 a.m. Justice Wheat was unable to attend the hearing but will participate in the decision.

I. ERIK THUESON FOR APPELLANT

Before Mr. Thueson could begin presenting his case, Justice Rice asked the question troubling this author and presumably other Justices of the Court: which theory of recovery under FELA[1] is the plaintiff presenting to the Court? Mr. Thueson replied with two theories: negligent assignment and aggravation of injury.

The trial court granted summary judgment in favor of the defense on the negligent assignment claim because the statute of limitations had run pursuant to the discovery rule. Mr. Thueson argued the trial court had no right to take the issue from the jury because there was evidence of an injury and evidence of negligence on the part of BNSF; the court should not have decided a factual question (when discovery occurred) when the facts were in dispute. Accordingly, Mr. Thueson asked the Court for remand on the negligent assignment claim in order to give the plaintiff a trial on the merits.

In regards to the aggravation of injury claim, the jury decided against plaintiff on the statute-of-limitations defense under the discovery rule. Nevertheless, Mr. Thueson argued the verdict was incorrect. He laid out the elements of the claim: employer knows of weakened condition; and employer assigns aggravating work. Mr. Thueson also discussed how the claim is subject to a contributory negligence defense. He then asked the Court to overrule the trial court's denial of his judgment as a matter of law in regards to when the original injury was discovered, arguing that the defense presented no evidence Mr. Anderson knew, or should have known, of his injury before the three year limitations period.

Finally, Mr. Thueson argued for a plaintiff-centered, liberal construction of FELA. He noted that FELA was intentionally written broadly so as to adapt to change—change driven by the railroad

[1] 45 U.S.C. §§ 51–60 (2012).

companies' attempt to whittle away the protections of FELA. Mr. Thueson expressed his concern that plaintiff was unable to argue for this FELA policy in front of the jury, despite *Urie v. Thompson*[2] (a leading case for FELA interpretation) being a policy driven decision.

II. BENJAMIN RECHTFERTIG FOR APPELLEE

Mr. Rechtfertig began his argument where Mr. Thueson left off: the policies behind FELA. Specifically, Mr. Rechtfertig identified that the statute of limitations is designed to protect defendants from losing vital evidence in the years between the alleged tortious conduct and trial. He further argued that in a cumulative trauma case such as Mr. Anderson's, a new tort does not arise every day. Thus, even though the majority of FELA should be liberally construed to allow for recovery, the defense-centric statute of limitations should not.

Mr. Rechtfertig then talked about the summary judgment order in regards to Mr. Anderson's negligent assignment claim. He stated the only thing the summary judgment order pertained to was Mr. Anderson's fall, not to other possible incidents of negligent assignment.

When asked what claims Mr. Rechtfertig saw in this case, he also replied with two: a cumulative trauma claim and a single incident claim (the hole incident). In regards to the negligent assignment claim, Mr. Rechtfertig conceded FELA does allow for such a claim in some circumstances. However, he argued this case did not present the appropriate circumstances.

In regards to the cumulative trauma claim, Mr. Rechtfertig argued the jury did have evidence to find the statute of limitations had run. He pointed to an MRI from 2003 that was almost identical to an MRI from 2009. Accordingly, there was evidence that Mr. Anderson discovered, or should have discovered, his injury well before the three year limitations period. In this circumstance, judgment as a matter of law on the issue was not appropriate, and the issue was appropriately decided by the jury.

Addressing the hole incident next, Mr. Rechtfertig pointed out that the jury decided this claim on the merits. After deliberation, they found the defendant was not negligent when Mr. Anderson fell in a hole on the job.

III. PREDICTIONS

It was unclear before oral argument exactly what claims for relief are present in this case. During oral argument, the Court and the

[2] 337 U.S. 163 (1949).

attorneys did their best to identify the operative claims. Nevertheless, this author remains unsure exactly what the operative claims are.

Confusion aside, it seems clear that the trial court erred when it granted summary judgment on Mr. Anderson's negligent assignment claim pursuant to the statute of limitations. There was evidence that Mr. Anderson did not know, or should not have known, of his injury prior to the three year limitation period. Conversely, there was evidence that he did know, or should have known, of his injury prior to the three year limitation period. In this situation, summary judgment is not appropriate; the issue should be submitted to the factfinder. However, if Mr. Rechtfertig is correct that the summary judgment order only precluded evidence about the hole incident, then summary judgment was likely appropriate.

The hole incident was decided by the jury on the merits. Plaintiff did not allege any colorable error in regards to the verdict. Therefore, the jury's verdict will almost certainly be upheld.

The denial of plaintiff's judgment as a matter of law motion will also likely be upheld. Defense presented evidence (the MRI from 2003) to show Mr. Anderson could have been aware of his injury prior to the three year limitations period.

Thus, the Court will likely uphold the lower court's ruling. The only order that might potentially be reversed is the lower court's order granting summary judgment.