

11-1-2017

Precap: *Stokke v. American Colloid Co.*

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Recommended Citation

Sydney Best, Oral Argument Preview, *Precap: Stokke v. American Colloid Co.*, 78 Mont. L. Rev. Online 124, https://scholarship.law.umt.edu/mlr_online/vol78/iss1/13.

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PRECAP; *Stokke v. American Colloid Co.***Sydney Best**

DA 17-0020

Montana Supreme Court Oral Argument: Wednesday, November 8, 2017 at 9:30 am in the Courtroom of the Montana Supreme Court, Joseph P. Mazurek Justice Building, Helena, Montana.

I. QUESTION PRESENTED

Are the doctrines of premises liability (traditionally landowner liability) and independent contractor liability (traditionally contractor liability) mutually exclusive such that a premises liability action is barred for the employee of a contractor who is injured while working on the business owner's land?

This case is significant because it affords the Court the opportunity to clarify the relationship between theories of liability that are often interconnected. If the Court accepts the argument that premises liability is unavailable whenever independent contractor liability is triggered, landowners are potentially immune from liability for injuries to employees of contractors caused by dangerous conditions on their premises.

II. FACTUAL AND PROCEDURAL BACKGROUND

Stokke was injured when she fell from a makeshift bridge on land owned by American Colloid.¹ At that time, Stokke's trucking company employer was under contract with American Colloid, the owner and operator of a bentonite mine, to provide it with various services including spraying roads with water to abate dust.² The day she fell, Stokke was attempting to reach American Colloid's water well to fill her water-truck's tank.³ A ditch surrounded the well.⁴ The crossing comprised of unsecured boards and allowed workers like Stokke to cross the ditch without stepping over or wading through it.⁵

¹ Appellant's Opening Brief at 10, *Stokke v. American Colloid Co.*, <https://perma.cc/P3XB-P6BQ> (Mont. May 3, 2017) (No. DA 17-0020).

² Appellee's Response Brief at 2, *Stokke v. American Colloid Co.*, <https://perma.cc/EMR4-H5K5> (Mont. June 30, 2017) (No. DA 17-0020).

³ Appellant's Opening Brief, *supra* note 1, at 10.

⁴ *Id.*

⁵ Appellant's Opening Brief, *supra* note 1, at 10; Appellee's Response Brief, *supra* note 2, at 25.

Stokke sued American Colloid for her injuries under the theories of premises liability and exceptions to independent contractor liability.⁶ American Colloid made two motions for summary judgment, first arguing that it owed Stokke no legal duty because she was the employee of an independent contractor.⁷ In its second motion for summary judgment, American Colloid argued that a breach of its duty of care, if any, was factually unsupported.⁸

On December 15, 2016, Carbon County District Court Judge Blair Jones found in favor of American Colloid by granting summary judgment on its first motion, and dismissed Stokke's claims.⁹ In his Order, Judge Jones explained that his analysis began with a threshold determination that the independent contractor liability doctrine applied, rather than premises liability.¹⁰ He decided that Stokke's case did not implicate the premises liability because her employer and American Colloid had an independent contractor relationship.¹¹ Under the independent contractor liability analytical framework, the judge found that no exceptions to the general rule of owner immunity existed and, therefore, American Colloid owed Stokke no duty.¹² Based on his no-duty conclusion, Judge Jones did not address the factual question of breach argued in American Colloid's second motion.¹³

III. SUMMARY OF ARGUMENTS

Stokke brings two claims on appeal: (1) whether the district court erred in concluding that premises liability and independent contractor liability are mutually exclusive doctrines; and (2) even if premises liability is inapplicable, whether the district court erred ruling that American Colloid owed no duty under independent contractor liability analysis because none of the three exceptions allowing recovery applied.

The focus of the oral argument will likely be to clarify the relationship between two legal doctrines that are intertwined in situations where a landowner is also a business owner that hires independent contractors. Summaries of the arguments and analysis of this threshold question are addressed below.

A. *Whether the doctrines of premises liability and owner-contractor liability are mutually exclusive*

⁶ Appellant's Opening Brief, *supra* note 1, at 7.

⁷ *Id.* at 8.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at *14.

¹¹ *Id.*

¹² Appellant's Opening Brief, *supra* note 1, at 22.

¹³ *Id.* at 9.

1. *Stokke's Argument*

Stokke centers her appeal on the district court's conclusion that premises liability cannot exist in situations which also trigger independent contractor liability analysis.¹⁴ Although she was acting in furtherance of her employment when she fell from the bridge, Stokke argues her right to recover from the landowner for breaching its duty to maintain safe premises remains intact.¹⁵

Stokke asserts that a landowner owes duties to people foreseeably on its premises independent of its business relationships with contractors.¹⁶ Barring premises liability claims brought by injured people whose status prevents recovery under another cause of action, permits negligent landowners to "entirely skirt their duties to a class of people on their land."¹⁷ Adopting a rule of mutual exclusivity would contradict the *Richardson* Court's elimination of status-based premises liability determinations.¹⁸ Stokke contends that, without premises liability, landowners like American Colloid would be immune from liability as long as the person injured by a dangerous condition is employed by a contractor.¹⁹ Rejecting American Colloid's argument that the duties imposed under independent contractor liability subsume the duties imputed to landowners, Stokke points to a void in Montana precedent so holding.²⁰

Instead, Stokke buttresses her argument that premises liability is distinct from the independent contractor doctrine with the Court's holding in *Steichen v. Talcott Properties, LLC*.²¹ There, Stokke says, the Court held that ordinary premises liability should apply to non-construction site cases.²² Stokke asserts that the policies underlying independent contractor liability were established around construction projects.²³ In non-construction site settings, like filling water-trucks on mining land, the owner is in the best position to keep the premises safe.²⁴ Stokke argues that her employment did not require her to engage in "construction-type" activities, and therefore, premises liability applies.²⁵

¹⁴ *Id.*, at 14; Appellant's Reply Brief at 7, *Stokke v. American Colloid Co.*, <https://perma.cc/RX87-44VJ> (Mont. Aug. 17, 2017) (No. DA 17-0020).

¹⁵ Appellant's Opening Brief, *supra* note 1, at 15 (citing *Richardson v. Corvallis Public School District No. 1*, 96 P.2d 748, 755 (Mont. 1997)).

¹⁶ *Id.*

¹⁷ Appellant's Opening Brief, *supra* note 1, at 21.

¹⁸ *Id.*

¹⁹ *Id.* at *15.

²⁰ Appellant's Reply Brief, *supra* note 14, at 7.

²¹ Appellant's Opening Brief, *supra* note 1, at 17 (citing *Steichen v. Talcott Properties, LLC*, 292 P.3d 458, 461 (Mont. 2013)).

²² Appellant's Opening Brief, *supra* note 1, at 18 (citing *Steichen*, 292 P.3d at 461).

²³ Appellant's Opening Brief, *supra* note 1, at 17.

²⁴ *Id.*

²⁵ *Id.* at 20.

Stokke contends that summary judgment improperly precluded jury consideration by finding that independent contractor liability and premises liability are mutually exclusive avenues to recovery.²⁶ Instead, Stokke argues, the jury should have the opportunity to hear evidence about whether American Colloid breached its duty to maintain safe premises for the foreseeable activities of entrants on its land.²⁷

2. *American Colloid Co.'s Argument*

American Colloid maintains the district court correctly determined that independent contractor liability controls Stokke's claim, not premises liability.²⁸ American Colloid disagrees that its motion for summary judgment was granted based on Judge Jones's threshold conclusion that the doctrinal liability rules are mutually exclusive.²⁹ It argues instead, that over time, the premises liability duty of care "subsumed" the duty of care under independent contractor liability in cases where premises liability is alleged against a landowner by the employee of a contractor.³⁰

American Colloid acknowledges that the two theories of liability have independent elements and analysis, but under the *Shannon v. Howard S. Wright Construction Company*, the elements were combined to determine landowner liability.³¹ In *Shannon*, American Colloid argues, the Court conflated premises liability and independent contractor liability analysis.³² American Colloid contends that under *Shannon*, premises liability is duplicative of the independent contractor liability analysis because an additional "control element" has been inserted into premises liability analysis for factual situations like Stokke's.³³ Based on its reading of *Shannon*, American Colloid reasons that the only situation in which it could be liable for injuries to Stokke is if her accident was entirely unrelated to her work.³⁴ Therefore, a finding of no duty of care under independent contractor liability analysis precludes a finding under a separate premises liability analysis if the "control element" is not satisfied.³⁵

Addressing Stokke's assertion that she was not injured on a construction site, American Colloid argues that her case is closely analogous to construction industry cases, and implicates an independent

²⁶ *Id.*

²⁷ *Id.* at 16.

²⁸ Appellee's Response Brief, *supra* note 2, at 8.

²⁹ *Id.* at 10.

³⁰ *Id.* at 10–11.

³¹ Appellee's Response Brief, *supra* note 2, at 13 (citing *Shannon v. Howard S. Wright Const. Co.*, 593 P.2d 438 (Mont. 1979)).

³² Appellee's Response Brief, *supra* note 2, at 14.

³³ *Id.* at *15.

³⁴ *Id.*

³⁵ *Id.* at 15–16.

contractor liability analysis under *Steichen*.³⁶ Pointing to the contractual obligations agreed to by Stokke's employer, American Colloid urges that Stokke was engaged in activities in furtherance of a mining operation, a "construction type" setting.³⁷

Even if premises liability scrutiny is not duplicative when no duty is found under independent contractor analysis, American Colloid concludes that Stokke's premises liability claim founders.³⁸ Stokke failed, it says, to allege a latent defect or a hidden or lurking danger.³⁹ Instead, Stokke fell while acting in furtherance of performance of her employer's contract with American Colloid; therefore, her claims implicate the method of performance of her work, not the condition of American Colloid's land.⁴⁰

IV. ANALYSIS

The Montana Supreme Court has consistently held that landowners owe a "general duty of ordinary care to have their premises reasonably safe and warn of any hidden or lurking dangers."⁴¹ Likewise, under Montana statute, landowners are responsible for injuries caused by the want of ordinary care in the management of their property.⁴² Stokke's appeal asks the Court to decide whether landowners' general duty of care under the premises liability doctrine evaporates when independent contractor liability is also implicated.

In *Richardson*, the Court rejected narrower historical parameters of premises liability in favor of broader analysis which allows plaintiffs to recover even when injuries are caused by open and obvious dangers.⁴³ This broad interpretation was more consistent with legislative intent and the trend of modern premises liability law, "neither of which incorporate exceptions" for categories of dangers or classes of people.⁴⁴ Scholarship cited in *Richardson* argues that departure from the traditional interpretation of premises liability, where "the right of the landowner to . . . unrestricted use of his property was more important than the personal safety of the entrant," is appropriate in favor of a flexible Restatement approach.⁴⁵

³⁶ Appellee's Response Brief, *supra* note 2, at 16 (citing *Steichen*, 292 P.3d 458 (Mont. 2013)).

³⁷ Appellee's Response Brief, *supra* note 2, at 18.

³⁸ *Id.* at 19.

³⁹ *Id.* at 20.

⁴⁰ *Id.*

⁴¹ *Richardson v. Corvallis Public School District No. 1*, 950 P.2d 748, 754 (Mont. 1997).

⁴² Mont. Code Ann. § 27-1-201.

⁴³ *Richardson*, 950 P.2d 748 at 754.

⁴⁴ *Id.* at 756.

⁴⁵ Richard L. Ferrell, III, *Emerging Trends in Premises Liability Law: Ohio's Latest Modification Continues to Chip Away at Bedrock Principles*, 21 OHIO N. UNIV. L. REV., 1995, at 1121, 1124, 1138.

The same rationale may persuade the Court to conclude that public policy and legislative silence on the issue weigh against a narrow holding that independent contractor liability and premises liability are mutually exclusive doctrines. Instead, the Court might find that the considerations of the allegedly dangerous condition and the employee's activities on the land are questions of fact to be left to the jury. Stokke and American Colloid dispute the control, maintenance, and nature of the footbridge, and whether employees were actually or constructively required to cross it.⁴⁶ If the Court determines that premises liability remains a viable avenue to recovery for Stokke, these are issues of material fact that are inappropriate for summary judgment.⁴⁷

V. SUMMARY

American Colloid's successful motion for summary judgment, followed by the district court's characterization of its decision-making process, provides the Court the opportunity to revisit and refine premises liability law in Montana. An adoption of a narrower view of the doctrine—as a subset of independent contractor liability—will immunize landowners from liability for injuries to contractors' employees, regardless of hazardous conditions. On the other hand, if the Court finds that the doctrines are independent, entrants who are injured by hazardous conditions will retain legal rights regardless of the reason for their presence on the premises.

⁴⁶ Appellant's Opening Brief, *supra* note 1, at 11; Appellee's Response Brief, *supra* note 2, at 3–4.

⁴⁷ *Steichen*, 292 P.3d 458 at 460.