

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: The Ohio Supreme Court

Case Name: *Niskanen v. Giant Eagle, Inc.*, 2009-Ohio-3626

Decided: July 30, 2009

Issue(s): Negligence/Damages/Self-Defense

Summary of Opinion: Paul Niskanen left a Giant Eagle grocery store with a shopping cart full of unpaid groceries. A store manager and another employee followed Paul into the parking lot, told him to stop, and then attempted to detain him. Paul punched the employee, and a fight ensued between the three men. Eventually, the manager and the employee managed to restrain Paul.

When the police arrived they instructed the men to release Paul, whom they had pinned to the pavement. Thereafter, the police discovered that Paul had no pulse, he was rushed to the hospital where he was pronounced dead. It was later discovered that Paul died from asphyxiation resulting from neck and torso compression.

Niskanen's Mother filed suit against Giant Eagle, and the men involved in the altercation, alleging numerous intentional-tort and negligence claims. Before trial, she dismissed all of the intentional tort claims against the individual defendants. On the remaining claims, the jury found that Niskanen was sixty percent liable for his own death, while Giant Eagle was forty percent liable. Since Niskanen was more than fifty percent liable for his own injuries, he was not awarded any compensatory damages, and as a result, the jury could not consider punitive damages. The jury also found that the Giant Eagle employees acted in self-defense.

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The court of appeals reversed, holding that the trial court should have allowed the jury to consider punitive damages in the absence of compensatory damages, and that self-defense could not be asserted in negligence causes of action, and even if it was an appropriate defense, it was irrelevant.

The Ohio Supreme Court reversed, holding that a plaintiff must be awarded some measure of compensatory damages to receive punitive damages. The Court reasoned that punitive damages are awarded as punishment for compensable harm, as a deterrent to similar action in the future, and cannot be considered independently.

Further, the Court recognized that a finding of comparative negligence on Niskanen's part does not defeat the recovery of damages where the defendant committed an intentional tort that proximately caused the injury. However, in this case, Mrs. Niskanen dismissed all of the intentional-tort claims before trial, and she could not attempt to transform her negligence claims into intentional tort claims at this juncture.

Lastly, the Court held that a defendant may raise self-defense as an affirmative defense to a negligence cause of action, when the facts of the case support a jury instruction on such a defense. The Court determined that the trial court erred in submitting a self-defense instruction to the jury on Niskanen's negligent failure to train claim, however, such error was harmless because the comparative negligence defense had already completely erased the consequences of the jury's finding of negligence against Giant Eagle. Moreover, the Court determined that the trial court did not err when it instructed the jury on self-defense on the claim for undue restraint.

In a passionate dissent, Justice Pfeifer disagreed with the majority that the self-defense instruction on the negligent failure to train claim was harmless, and that such an instruction was relevant to the undue restraint claim. He reasoned that the employees had acted unreasonably, that although Niskanen's crime may have landed him in prison for a few days, instead, he paid with his life.

The Judgment of the court of appeals was reversed and the judgment of the trial court reinstated.

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