

#26660, 26667 (NOR)

#26660

**LEGAL ISSUES**

**I. Did the trial court err in denying Hewitt's Motion for Directed Verdict as to Felderman's negligence?**

Held: The trial court held that Hewitt was not entitled to Directed Verdict because the jury could apply the Sudden Emergency Doctrine to relieve Felderman of liability for her negligence based upon the evidence presented at trial.

*SDCL § 15-6-50(a)*

*Christenson v. Bergeson*, 2004 S.D. 113, 688 N.W.2d 421 (S.D. 2004)

*Baddou v. Hall*, 2008 S.D. 90, 756 N.W.2d 554 (S.D. 2008)

*Dartt v. Berghorst*, 41992 S.D. Lexis 54, 84 N.W.2d 891 (S.D. 1992)

**II. Whether the trial court erred in denying Hewitt's Motion for New Trial on the issue of damages?**

Held: The trial court held that Hewitt is not entitled to a new trial because the jury's verdict could be explained by the application of the Sudden Emergency Doctrine.

*SDCL 15-6-59(a) (5) and (6)*

*Morrison v. Mineral Palace Ltd. P'ship*, 1998 S.D. 33; 547 N.W.2d 869 (S.D. 1998)

*Case v. Murdock*, 1992 S.D. Lexis 89; 488 N.W. 2d 885 (S.D. 1992)

*Berry v. Risdall*, 1998 S.D. 18; 576 N.W.2d 1 (S.D. 1978)

*Baker v. Jewell*, 77 S.D. 573; 96 N.W.2d 299 (S.D.1959)

**III. Whether the trial court erred in denying Hewitt's Motion for Reasonable Attorney's Fees and Costs under SDCL§15-6-37?**

Held: The trial court held that Hewitt is not entitled to recover reasonable attorney's fees or costs as neither she nor Felderman were a prevailing party.

*SDCL 15-6-36(a)*

*SDCL 15-6-26(b) (1)*

*SDCL §15-6-37*

*Merchand v. Mercy Hosp.*, 22 F. 3d 933 (9<sup>th</sup> Cir. 1994)

*Garcia v. Hyster Co.*, 28 Cal. App. 4<sup>th</sup> 724 (Cal. 1994)

*Thompson v. King Feed & Nutrition Serv.*, 105 P.3d 378 (WA 2005)

*Koegel v. R. Motors, Inc.*, 448 N.W.2d 452 (Iowa 1989).

STATEMENT OF ISSUES

1. **Whether the trial court's denial of Hewitt's motion for a directed verdict on the issue of Felderman's negligence is moot since the jury found Felderman negligent.**

The trial court denied the motion for directed verdict and submitted the issue of negligence to the jury. The jury found Felderman negligent.

*Cody v. Edward D. Jones & Co.*, 502 N.W.2d 558, 563 (S.D. 1993)

2. **Whether the trial court properly upheld the jury verdict and denied Hewitt's motion for a new trial and motion for reconsideration after finding the verdict was supported by the evidence and instructions.**

The trial court properly held that the evidence supported the jury's conclusion that Felderman's negligence did not cause Hewitt's alleged injuries or damages, and thus, a new trial was not warranted.

*Alvine Family Ltd. Partnership v. Hagemann*, 2010 S.D. 28, 780 N.W.2d 507

*Anderson v. Black Hills Power & Light Co.*, 1997 S.D. 12, 559 N.W.2d 886

*Isaac v. State Farm Mut. Auto. Ins. Co.*, 522 N.W.2d 752 (S.D. 1994)

*Bakker v. Irvine*, 519 N.W.2d 41 (S.D. 1994)

3. **Whether the trial court properly denied Hewitt's motion for attorney's fees and costs and motion for reconsideration because Felderman had reasonable grounds to believe she would prevail at trial and because negligence is not the proper subject of a request for admission.**

The trial court correctly held that Hewitt was not entitled to costs pursuant to SDCL § 15-6-37(c)(2).

SDCL § 15-6-37(c)(2)

*Novak v. Novak*, 2007 S.D. 108, 741 N.W.2d 222

*Board of Dirs., Water's Edge v. Anden Group*, 136 F.R.D. 100, 104-106 (E.D. Va. 1991)

*Dobos v. Ingersoll*, 9 P.3d 1020, 1026-27 (Alaska 2000)

4. **Whether the trial court abused its discretion by failing to award Felderman, the prevailing party, her costs and disbursements under SDCL § 15-17-37.**

The trial court improperly denied Felderman her costs and disbursements after concluding she was not a prevailing party.

SDCL § 15-17-37

*Culhane v. Michels*, 2000 S.D. 101, ¶ 33, 615 N.W.2d 580, 590

*Robinson v. City of St. Charles*, 972 F.2d 974, 976 (8<sup>th</sup> Cir. 1992)

*Industrial Risk Insurers v. New Orleans Public Service, Inc.*, 1991 U.S. Dist. LEXIS 259 (E.D. La.)

5. **Whether the trial court erred in admitting evidence of Hewitt's claim for future damages for a rhizotomy.**

The trial court improperly allowed Hewitt to present speculative and foundationally deficient evidence regarding the need for a future rhizotomy.

*Bedney v. Heidt*, 1998 SD 50, ¶ 21, 578 N.W.2d 570, 574 n3

*Strub v. Stillmunkes Salvage and Trucking, Inc.*, 2003 Iowa App. LEXIS 546, \*11

*Kincaid v. Lyerla*, 680 S.W.2d 471, 472-73 (Tenn. App. 1984)

*E-Ton Dynamics Ind. Corp. v. Hall*, 115 S.W.3d 816, 819 (Ark. App. 2003)