

MONDAY, OCTOBER 5, 2009  
9:00 A.M.

NO. 1

#25077

STATE FARM AUTOMOBILE  
INSURANCE COMPANY,  
Plaintiff and Appellee,

vs.

WILLIAM GERTSEMA, as Guardian  
ad litem for SHANE GERTSEMA,  
a minor,  
Defendant,

and

TONY GERTSEMA, as Guardian  
ad litem for JOZETTE GERTSEMA,  
a minor,  
Defendant and Appellant.

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(FOR APPELLANT)

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(FOR APPELLEE STATE FARM)

The Honorable Ronald K. Roehr  
Third Judicial Circuit  
Grant County

(CIV 07-28)

## Statement of Issues

1. **Whether there is a material question of fact that Shane or Jozette Gertsema had the express permission to ride the ATV on October 10, 2005, when they obtained permission from Brittany Hanson on two separate occasions to ride the ATV.**

The trial court concluded no questions of material facts exist and that Shane and Jozette Gertsema did not have express permission to ride the ATV on October 10, 2005, even though Brittany Hanson had expressly granted permission to ride the ATV on two separate occasions that day.

- SDCL 32-35-70
- Estate of Trobuagh v. Farmers Ins. Exch., 201 SD 37, 623 N.W.2d 497
- State Farm Auto Ins. Co. v. Ragatz, 1997 SD 123, 571 NW2d 155
- American Family Ins. Group v. Howe, 584 F. Supp. 369 (D.S.D. 1984)

2. **Whether there is a material question of fact as to whether Brittany Hanson had the authority to grant express permission to Shane Gertsema and Jozette Gertsema to ride the ATV on October 10, 2005**

The trial court concluded that no questions of material facts exist, and that Brittany Hanson did not have authority to grant express permission to ride her ATV.

- SDCL 15-6-56(c)
- Estate of Trobuagh v. Farmers Ins. Exch., 201 SD 37, 623 N.W.2d 497
- State Farm Auto Ins. Co. v. Ragatz, 1997 SD 123, 571 NW2d 155
- American Family Ins. Group v. Howe, 584 F. Supp. 369 (D.S.D. 1984)

3. **Whether there is a material question of fact that either Shane or Jozette Gertsema had implied permission to ride the ATV on October 10, 2005.**

The trial court concluded no questions of material facts exist and that Shane and Jozette Gertsema did not have implied permission to ride the ATV on October 10, 2005 even though Jozette Gertsema and many other friends of Brittany Hanson had ridden the ATV on numerous occasions prior to October 10, 2005.

- SDCL 32-35-70
- Estate of Trobuagh v. Farmers Ins. Exch., 201 SD 37, 623 N.W.2d 497
- State Farm Auto Ins. Co. v. Ragatz, 1997 SD 123, 571 NW2d 155

4. **Whether the past conduct of the Hansons in repeatedly allowing their children to decide who could ride the ATV creates a genuine issue of material fact as to whether Shane or Jozette Gertsema had implied permission to ride the ATV on October 10, 2005.**

The trial court concluded there was not a genuine issue of material fact as to the question of implied permission, even though the Hansons had purchased the ATV to be used primarily as a recreation vehicle by Brittany Hanson and her friends, including Jozette Gertsema, and the friends of Brittany Hanson had used the ATV on many occasions prior to October 10, 2005.

- SDCL 15-6-56(c)
- Estate of Trobuagh v. Farmers Ins. Exch., 201 SD 37, 623 N.W.2d 497
- State Farm Auto Ins. Co. v. Ragatz, 1997 SD 123, 571 NW2d 155

5. **Whether there is a material question of fact as to whether the Hansons had established rules concerning the use of the ATV by their children's friends, if so what was the scope of those alleged rules.**

The trial court concluded that there was not genuine issue of material fact as to the question of implied permission. The trial court concluded (as a matter of law?) that the Hansons had instituted rules that the ATV only be driven when the parents were present and that the ATV not be driven on the road.

- SDCL 15-6-56(c)
- Estate of Trobuagh v. Farmers Ins. Exch., 201 SD 37, 623 N.W.2d 497
- State Farm Auto Ins. Co. v. Ragatz, 1997 SD 123, 571 NW2d 155

6. **Whether the trial court erred in granting summary judgment in favor of Plaintiff State Farm Automobile Insurance Company.**

The trial court concluded there were no genuine issues of material fact and granted summary judgment in favor of State Farm Automobile Insurance Company.

- SDCL 15-6-56(c)
- Cowan Brothers L.L.C. v. American State Bank, 2007 SD 131, 743 N.W.2d 411

7. **Whether the trial court erred in denying Defendant's Motion to Strike the Affidavits of Calvin D. Hanson and Laci D. Hanson.**

The trial court concluded that as long as the affidavits met the requirements of SDCL 15-6-7, the court could not strike the affidavits, even if they contained clearly erroneous statements and were based on hearsay.

- SDCL 15-6-56(e)
- SDCL 15-6-56(g)
- Kuehl v. Horner (J.W.) Lumber Co., 2004 SD 48, 678 N.W.2d 809