

WEDNESDAY, JANUARY 13, 2010
9:00 A.M.

NO. 1

#25261

FRANCIS JANIS,
Plaintiff and Appellant,

vs.

NASH FINCH COMPANY d/b/a
PRAIRIE MARKET,
Defendant and Appellee.

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable John J. Delaney
Seventh Judicial Circuit
Pennington County

(CIV 06-1438)

20-20-10

STATEMENT OF LEGAL ISSUES

- 1) Did the undisputed material facts support the nonmoving party, Francis Janis, and stand opposed to Prairie Market, with the remaining material facts being in dispute, thus preventing the moving party from being properly entitled to judgment as a matter of law, and therefore a remand is necessary so that the case may be tried to a jury?

The trial court held that no genuine issue of material fact existed, and that Prairie Market, the moving party, was entitled to judgment as a matter of law.

Pettry v. Rapid City Area School Dist., 2001 SD 88, 630 NW2d 705
SDCL 15-6-56(c)

- 2) Did the trial court erroneously reject, misapprehend, or misapply the legal standard of "totality of the circumstances," which presented a jury question, so therefore a remand is necessary for the case to be tried to a jury?

The trial court held that "totality of the circumstances" does not apply, but rather that Mr. Janis' evidence must show that Prairie Market had prior knowledge of the particular hazard in question, with proof of specific similar acts or actual knowledge of the present dangerous condition, and that Mr. Janis had failed to establish such facts, thus entitling Prairie Market to summary judgment.

Small v. McKennan Hospital, 403 NW2d 410 (SD 1987)
Looks Twice v. Whidby, 1997 SD 120, 569 NW2d 459