

TUESDAY, MARCH 23, 2009
10:00 A.M.

NO. 2

#25334

AMERICAN FAMILY INSURANCE GROUP,
Plaintiff and Appellee,

vs.

HEATHER ROBNIK,
Defendant and Appellant,

and

SHIRLEY HUNTER,
Defendant and Appellee.

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(FOR APPELLANT)

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(FOR APPELLEE AMERICAN
FAMILY)

The Honorable John J. Delaney
Seventh Judicial Circuit
Pennington County

(CIV 08-1154)

STATEMENT OF LEGAL ISSUES

1. Whether Findings of Fact and Conclusions of Law made in an underlying tort action are *res judicata* in a subsequent declaratory judgment action involving the same parties.

The trial court held in the negative.

People ex rel LF, 2006 SD 76, 721 N.W.2d 83.

Northstar Mutual Ins. Co. v. Kneen, 484 N.W.2d 908 (S.D. 1992)

2. Is the tort of negligent misrepresentation to be treated differently than other forms of negligence for the purpose of determining coverage under a liability insurance policy in which a covered "occurrence" is defined as an "accident ... which results ... in bodily injury or property damage" and in which the term "accident" is not defined.

By implication, the trial court held in the affirmative.

Sheets v. Brethren Mutual Ins. Co., 679 A.2d 540 (Md. 1996).

Fisher v. Kahler, 2002 SD 30, 641 N.W.2d 122.

Wood v. Safeco Ins. Co. of America, 980 S.W.2d 43 (Mo. Ct. App. 1998).

Roden v. General Cas. Co. of Wisconsin, 2003 SD 130, 671 N.W.2d 622.

3. Does a false statement made in a Property Condition Disclosure Statement under SDCL 43-4-44 constitute deceit as a matter of law?

The trial court held in the affirmative.

Fisher v. Kahler, 2002 SD 30, 641 N.W.2d 122.

Schmidt v. Wildcat Cave, Inc., 261 N.W.2d 114 (S.D. 1977).

Ahl v. Arnio, 388 N.W.2d 532 (S.D. 1986).

SDCL 20-10-1 and 20-10-2.

4. Does a seller's liability for negligent misrepresentation arising from her failure to disclose prior plumbing problems in a Property Condition Disclosure Statement constitute personal liability under a contract, and if so, whether such a contract is directly related to the ownership, maintenance or use of the real property.

The trial court did not address this issue.

Parmely v. Hildebrand, 201 SD 83, 630 N.W.2d 509.

Engelhart v. Kramer, 1997 SD 124, 570 N.W.2d 550.

SDCL 43-4-38, 43-4-42 and 43-4-44.