

TUESDAY, MARCH 23, 2010
11:00 A.M.

NO. 3

#25281, #25297

FALYN REINFELD,
Plaintiff and Appellee,

vs.

H.L. HUTCHESON,
Defendant and Appellant.

Ms. Jennifer L. Wollman
Woods, Fuller, Shultz
& Smith, P.C.
Attorneys at Law
PO Box 5027
Sioux Falls SD 57117-5027
Ph 336-3890

(FOR APPELLANT)

Mr. Clint L. Sargent
Mr. William E. Blewett
Meierhenry & Sargent
Attorneys at Law
315 S Phillips Ave
Sioux Falls SD 57014
Ph 336-3075

(FOR APPELLEE)

The Honorable William J. Srstka, Jr.
Second Judicial Circuit
Minnehaha County

(CIV 07-3909)

NOTICE OF REVIEW FILED JUNE 17, 2009

20-20-10

Statement of Issues

1. Whether the trial court abused its discretion in setting aside the jury's verdict on the basis that no damages for pain and suffering were awarded and granting Reinfeld's motion for new trial.

The trial court granted Reinfeld's motion for a new trial.

Waldner v. Berglund, 2008 SD 75, 754 N.W.2d 832

Gould v. Mans, 152 N.W.2d 92 (S.D. 1967)

Penney v. Praxair, Inc., 116 F.3d 330 (8th Cir. 1997)

Kelly v. Builders Square, 632 N.W.2d 912 (Mich. 2001)

2. Whether the trial court erred in ruling that all damages issues should be retried upon a second jury trial, including the separate and distinct claims for loss of earning capacity, retraining and lost wages.

The trial court overruled Hutcheson's objections to Reinfeld's proposed order granting a new trial and ordered that all triable issues of damages be retried.

SDCL § 15-6-59(a)

Byre v. Wiecezorek, 85 S.D. 645, 190 N.W.2d 57 (1971)

Gasoline Products Co. v. Chaplin Refining Co., 283 U.S. 494, 51 S.Ct. 513, 75 L.Ed. 1188 (1931)

Kubilus v. Owens, 2008 WL 2885838 (Ohio App.)

3. Whether the trial court erred in overruling Hutcheson's objections to Rick Ostrander's testimony and allowing him to testify as to calculations and projections of the value of Reinfeld's alleged lost earning capacity into the future.

The trial court overruled Hutcheson's objections to Rick Ostrander's testimony and allowed Ostrander to testify as to his calculation and projection of the monetary value of Reinfeld's alleged lost earning capacity without an economic expert.

Flagtwet v. Smith, 367 N.W.2d 188 (S.D. 1985)

D'Ambrosia v. Lang, 985 So.2d 800 (La.App. 2008)

Liston v. University of West Virginia Board of Trustees, 438 S.E.2d 590 (W.Va. 1993)

**BY NOTICE OF REVIEW, DID THE TRIAL COURT ERR
WHEN IT REFUSED TO INSTRUCT THE JURY
FOLLOWING ITS QUESTION WHETHER PERMANENT
IMPAIRMENT AND PERMANENT DISABILITY ARE
SYNONYMOUS?**

The trial court declined to instruct the jury after being presented with the question of whether the terms permanent impairment and permanent disability were synonymous under South Dakota law.

- SDCL §21-3-1
- *Carlson v. Constr. Co.*, 2009 SD 6, 761 N.W.2d 595
- *Rest 2d Torts* §917