
IMMUNITY - WISCONSIN

Westmas v. Creekside Tree Service, Inc.

Supreme Court of Wisconsin - February 7, 2018 - N.W.2d - 2018 WL 739222 - 2018 WI 12

Surviving son, and spouse, individually and as administrator of deceased pedestrian's estate, brought action against tree trimmer and its insurer after pedestrian was killed when tree branch cut by trimmer fell on her while she walked along retreat center path.

The Circuit Court granted tree trimmer summary judgment on recreational immunity grounds. Plaintiffs appealed. The Court of Appeals reversed and remanded. Trimmer petitioned for further review.

The Supreme Court of Wisconsin held that:

- As matter of first impression, tree trimmer was not center's "agent" within meaning of recreational activities statute and, thus, was not entitled to recreational immunity, and
- Tree trimmer was not "occupier" of center's property and, thus, was not entitled to recreational immunity as statutorily-defined property "owner."

Tree trimmer, an independent contractor, was not retreat center's "agent" within meaning of recreational activities statute and, thus, was not entitled to recreational immunity from negligence claims arising out of falling tree limb that killed pedestrian while she was walking on retreat center path; while retreat center provided trimmer with general vision, concept, and broad scale of tree work to be done on property and coordinated with tree trimmer to ensure its work would come within budget, center did not provide any reasonably precise specifications and tree trimmer retained control over decisions such as whether or not to use rope to bring down branch that killed pedestrian, where to place safety cones, and how to utilize "spotters."

Tree trimmer was not "occupier" of retreat center's property at time it cut tree branch that fell and killed pedestrian and, thus, was not entitled to recreational immunity, as statutorily defined "owner" of property, with respect to negligence claims arising from pedestrian's death; tree trimmer's presence on property did not exceed mere use or approach degree of permanence, tree trimmer moved from temporary location to temporary location for limited purpose of trimming trees as needed, tree trimmer was not responsible for opening up the land to public, and tree trimmer lacked authority to control who entered and exited the property or to even detour pedestrians.

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