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Mercer v. North Central Service, Inc.

Supreme Court of Nebraska - January 22, 2021 - N.W.2d - 308 Neb. 224 - 2021 WL 219240

Landowners and their insurers, who were affected by a natural gas explosion and fire after a natural gas line was struck while contractor was drilling an underground path for fiber optic cable, brought action against the Metropolitan Utilities District (MUD), asserting claims for negligence.

The District Court denied MUD's motion for summary judgment. MUD appealed.

The Supreme Court held that:

- Discretionary function exception to the Political Subdivisions Tort Claims Act (PSTCA) did not immunize MUD with respect to its actions in locating and marking the relevant gas lines;
- Discretionary function exception to the PSTCA did not immunize MUD with respect to its failure to timely shut off gas line; and
- Discretionary function exception to the PSTCA did not immunize MUD with respect to workers' failure to properly tell a supervisor that gas line had not been properly abandoned.

To extent that Metropolitan Utilities District (MUD) had any discretion in locating and marking relevant natural gas lines, so as to avoid natural gas pipe strikes when statewide one-call notification center performed horizontal directional drilling (HDD) to bore an underground path for fiber optic cable, that discretion was not protected by the discretionary function exception to the Political Subdivisions Tort Claims Act (PSTCA), as would provide MUD immunity from suit by landowners and their insurers who were affected by natural gas explosion when a buried gas line was struck during HDD process; buried utility lines were under MUD's sole control, and because lines were not readily apparent, MUD had statutory duty to advise excavators of location of the lines with stakes, flags, paint, or other clearly identifiable markings.

Failure by Metropolitan Utilities District (MUD) to timely shut off natural gas lines and properly abandon out-of-service gas line outside of building prior to natural gas explosion was not protected by the discretionary function exception to the Political Subdivisions Tort Claims Act (PSTCA), in suit brought by landowners and insurers who were affected by the explosion, since MUD, because of its own gas emergency procedures, had no choice as to whether it needed to turn off the gas in a timely manner.

Actions by Metropolitan Utilities District (MUD) workers following natural gas explosion, in not properly telling supervisor that line that caused the explosion had not been properly abandoned, were not protected by the discretionary function exception to the Political Subdivisions Tort Claims Act (PSTCA), in suit brought by landowners and insurers who were affected by the explosion; MUD's locating manual provided that a locator "shall" call into dispatch or fill out forms reporting the error, and a separate MUD procedure manual provided a guide in event that it needed to abandon a gas line.

