
IMMUNITY - NEBRASKA

Angel v. Nebraska Department of Natural Resources

Supreme Court of Nebraska - April 14, 2023 - N.W.2d - 314 Neb. 1 - 2023 WL 2939979

Following failure of dam, which resulted in one death and property damage, special administrator of decedent's estate and owners of property, including administrator and corporation, sued defendants including the Department of Natural Resources, asserting claims for negligence and nuisance.

The Department asserted immunity as an affirmative defense. The District Court granted the Department's motion for summary judgment based on immunity provision of the Safety of Dams and Reservoirs Act. Administrator and owners appealed, and petition to bypass review by the Court of Appeals was granted.

The Supreme Court held that:

- The Department's immunity included immunity for conduct prior to the effective date of the Act;
- Duties of the Department to inspect dam and determine its hazard potential classification fell within the Act's immunity provision;
- The Department was immune under the Act from claim that it was negligent in approving revised plans to reconstruct dam;
- The Department was immune under the Act from claim that it was negligent in conducting inspections of the dam;
- The Department was immune under the Act from claims alleging negligence based on dam's classification and lack of emergency plan;
- The Department was immune under the Act from negligence claim based on failure to train and supervise its agents or employees; and
- The Department's allegedly negligent inspections and adjudications of dam's hazard potential did not come within emergency exception to immunity for negligent acts .

Department of Natural Resources did not assume control of failed dam during an "emergency," and thus Department's allegedly negligent inspections of dam and adjudications of its hazard potential did not come within emergency exception to the Department's immunity for negligent acts under the Safety of Dams and Reservoirs Act, so as to make Department liable on claims brought by owners of damaged property and administrator of estate of individual who died as result of dam failure; the Department was not aware of the dam's failure or of the conditions leading to failure until after dam had been breached, and allegations against the Department were not based on any acts or omissions during an emergency.

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