

Case Name: Deviney v. Union Pacific Railroad Co.

Date Decided: August 6th, 2010

Originally Filed in: Nebraska (state)

Decided by: Nebraska Supreme Court (State)

Court: Supreme Court of Nebraska

Judge: Heavican

Citation: 280 Neb. 450

Background:

Plaintiff, a railroad worker, brought this action against Union Pacific Railroad (Employer) for alleged injuries she suffered after being infected with the West Nile Virus as a result of mosquito bites while working. Plaintiff alleged that Employer knew or should have known that nearby ponds were rife with mosquitoes, and that Employer failed to take appropriate precautions to protect plaintiff. As a result of the infection, plaintiff alleges that she suffers hearing loss and other physical ailments. Employer filed a motion for summary judgment, alleging that it did not have a duty to protect the plaintiff from mosquitoes and asked the court to apply the doctrine of *ferae naturae*.

Issue:

Does the doctrine of *ferae naturae* preclude a plaintiff for bringing a FELA claim against her employer when the plaintiff alleges that she contracted a harmful virus from mosquito bites sustained while on the job?

Overall Issues Discussed or Touched Upon in this Case:

- *Ruling on Summary Judgment*

Held:

No. The court denied the Employer's motion for summary judgment. The doctrine of *ferae naturae* does not override the employer's duty to provide a reasonably safe place to work when the cause of action is promulgated under the Federal Employer's Liability Act. The doctrine of *ferae naturae* essentially provides that a landowner cannot be held liable for the actions of dangerous animals on his or her property unless he or she has reduced the animals to his or her possession. However, under the FELA, an employer has a duty to provide a reasonably safe place to work. An employer breaches its duty to provide a safe workplace when it knows or should know of a potential hazard in the workplace, yet fails to exercise reasonable care to inform and protect its employees. The court reasoned that there was a genuine issue of material fact as to whether the Employer knew of harmful, stagnant pools that were breeding grounds for mosquitoes, located along the plaintiff's designated work route.

Comments:

The doctrine of *ferae naturae* does not override the employer's duty to provide a reasonably safe place to work when the cause of action is promulgated under the Federal Employer's Liability Act.