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MDB Trucking, LLC v. Versa Prods. Co., 136 Nev. Adv. Op. 72 (Nov. 5, 2020)

Kiley Harrison

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CASE-TERMINATING SANCTIONS FOR SPOILIATION OF EVIDENCE

Summary

Eight plaintiffs who were injured after a MDB trailer's gate opened, dumping its contents onto the interstate, sued MDB and Versa. MDB cross-claimed against Versa, alleging the trailer's Versa valve was designed defectively and dangerously, ultimately causing the accident.

A year went by between the accident and the start of litigation. During this time, MDB mechanics made regular maintenance repairs to the trailer that dumped on the interstate. The mechanics threw away the materials that were replaced, not believing they would be relevant to future litigation. The district court ordered case-terminating sanctions for MDB's spoliation of evidence. The Nevada Supreme Court reversed and remanded the case because the record did not support the imposition of such severe sanctions because MDB did not act willfully and Versa had not proved incurable prejudice if case-terminating sanctions were not applied.

Background

Petitioner MDB Trucking ("MDB") is a commercial trucking company. MDB's drivers use 18-wheel tractors to haul gravel, rock, and other materials in belly-dump trailers. Respondent Versa Productions Company ("Versa") manufactures the dump gate valves for MDB's tractor/trailer rigs.

A year prior to the incident in dispute, Daniel Koski (an MDB driver) unexpectedly had his trailer's dump gate opened, and the load dumped out on two different occasions. MDB mechanics made several alterations to prevent this from happening again by isolating the electrical circuit for the dump controls from the other electrical systems. This process included replacing the

¹ By Kiley Harrison

rig's Versa valve with the purpose of ensuring the Versa valve did not receive electric current unless the driver turned the switches on.

On July 7, 2014, Daniel Koski's trailer opened without activation again and dumped his load on the interstate, causing collisions, damage to vehicles, and injuries. The same thing happened to another MDB trailer three miles away, but that incident did not lead to accident or injury. MDB, in anticipation of litigation, retained experts to investigate the July incidents. The experts concluded that the Versa valve system had design defects, did not include safeguards that later versions of the valve had, and were susceptible to activation without command when exposed to external electromagnetic fields. Immediately thereafter, MDB took its belly dump tractor/trailer rigs off of the road until the MDB mechanics installed a new pin lock system so the gates could only open when a driver physically removed the pin from the outside.

Throughout the following year, MDB mechanics continued routine maintenance on Daniel Koski's rig, which included replacing a plug, two sockets, and a damaged cord that were part of the Versa valve's electrical circuit. Additionally, the mechanics replaced another cord on a different electrical circuit. All of these materials were thrown away after being replaced because MDB thought they would be irrelevant to future litigation.

Eight plaintiffs' cases against MDB and Versa were consolidated for discovery purposes. MDB cross-claimed against Versa, alleging that the Versa valve's dangerous and defective design caused the collisions on the interstate after Daniel Koski's trailer gate opened, dumping its contents. MDB and the plaintiffs (who assigned their claims against Versa to MDB) reached a mediated settlement after several years of litigation.

A couple weeks after the settlement, Versa filed a motion for sanctions against MDB for spoliation of evidence (the discarded plug, sockets, and cords) and asked the court to dismiss

MDB's claim with prejudice. MDB claimed the repairs were routine, the parts were irrelevant, and at most Versa was entitled to a permissive adverse-inference instruction, not a dismissal.

At the evidentiary hearing, there was conflicting testimony between Versa's expert and MDB's experts regarding the electrical currents and cords. After the hearing, the district court dismissed MDB's claims with prejudice. The court concluded that although MDB did not intend to harm Versa by throwing away the materials, it did act willfully, and the prejudice to Versa could not be cured by lesser sanctions. MDB appealed the dismissal. Versa filed a motion for attorney's fees and costs, which the district court granted in part and denied in part. Both parties appealed this order, and the Nevada Supreme Court consolidated the appeal and cross-appeals.

Discussion

Although the district court has discretion in choosing spoliation sanctions, the dismissal of a case with prejudice should be used as a sanction of last resort. The court must look to a number of factors in considering whether case-terminating sanctions are proper, including (1) the willfulness or culpability of the offending party, (2) the prejudice to the non-offending party caused by the loss or destruction of evidence, and (3) the feasibility and fairness of other less severe sanctions. The Nevada Supreme Court reviewed the district court's application of law de novo.

The district court rejected MDB's definition of "willfulness" taken from *Bass-Davis*² and instead applied a criminal jury instruction definition taken from *Childers*.³ Under *Childers*, "willfully" does not require any intent to violate the law, injure another, or obtain an advantage. However, the general rule is that case-terminating sanctions for pre-litigation spoliation of evidence are unwarranted without a degree of willfulness, bad faith, or intent to harm. Mere negligence is not enough to warrant dismissal. Thus, the district court erred in using the *Childers*

² *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006).

³ *Childers v. State*, 100 Nev. 280, 680 P.2d 598 (1984).

criminal definition of willfulness instead of the *Bass-Davis* definition, which affected the analysis of the rest of the case-terminating sanction factors.

MDB acted negligently—not willfully—when it threw away the materials. Thus, Versa bore the burden of proving that it was materially prejudiced in a way that nothing less than case-terminating sanctions could cure the prejudice. The district court failed to evaluate other sanction options that could cure the prejudicial result of not having the discarded parts. For example, there is no apparent reason why Versa could not simply recreate the abrading cord situation at MDB’s expense to establish its theory of the case. Additionally, the district court’s finding that adverse-inference instructions would be inappropriate as a less-severe sanction was incorrect.

The case was reversed and remanded with instructions for the district court to consider whether Versa can meet its burden of establishing prejudice. Further, the district court is allowed to revisit whether the discarded parts are even relevant to the case. Lastly, the order granting in part and denying in part Versa’s motions for costs and fees was vacated.

Conclusion

The Nevada Supreme Court reversed and remanded the case because the district court failed to apply the correct definition of “willfulness” required to establish whether case-terminating sanctions are warranted. This error affected the rest of the analysis. Thus, the district court was instructed to consider whether Versa can meet its burden of establishing incurable prejudice unless case-terminating sanctions are applied.