Filed 6/2/17 Beckering v. Shell Oil Co. CA2/3
Opinion on remand from the Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

WANDA L. BECKERING, Plaintiff and Appellant, v. SHELL OIL COMPANY, Defendant and Respondent.	B256407 (Los Angeles County Super. Ct. No. BC518337)

APPEAL from a judgment of the Superior Court of Los Angeles County, Marc Marmaro, Judge. Reversed and remanded with directions.

The Lanier Law Firm, H. W. Trey Jones, Stephanie M. Taylor and Mark A. Linder for Plaintiff and Appellant.

Nixon Peabody, Jennifer A. Kuenster, Ross M. Petty, Lauren M. Michals and Aaron M. Brian for Defendant and Respondent.

This matter is before us on remand from the California Supreme Court. Plaintiff and appellant Wanda L. Beckering (Beckering) appealed a judgment following a grant of summary judgment in favor of defendant and respondent Shell Oil Company (Shell) in a premises liability action. Beckering's late husband was a Shell employee. Beckering alleged she developed mesothelioma as a result of exposure to asbestos fibers that her husband inadvertently carried home on his work clothing, which she laundered.

In our prior decision in this matter (*Beckering v. Shell Oil Company* (Nov. 21, 2014, B256407) [nonpub. opn.] (*Beckering I*)), guided by *Campbell v. Ford Motor Co.* (2012) 206 Cal.App.4th 15 (*Campbell*), we concluded that based upon the *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*) factors, a premises owner has no duty to protect a family member from secondary exposure to asbestos resulting from contact with a family member who wore asbestos-contaminated work clothes home. Accordingly, we affirmed the trial court's grant of summary judgment.

The Supreme Court granted review and ultimately transferred the matter back to this court with directions to vacate our decision and to reconsider the cause in light of *Kesner v. Superior Court* (2016) 1 Cal.5th 1132 (*Kesner*). Guided by *Kesner,* we now conclude Shell did owe Beckering a duty and therefore we reverse the grant of summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Beckering's husband, Frank, worked at Shell's Wilmington and Dominguez facilities, primarily as a machinist, from 1954 until 1992, when he retired. He died in 2009. The Beckerings

were married for 60 years. She laundered his work clothes but never visited his workplace.

On August 14, 2013, Beckering filed suit against numerous defendants, including Shell, alleging she developed mesothelioma as a result of exposure to asbestos brought home on her husband's clothing while he worked at Shell's facilities. The complaint pled three causes of action: two causes of action based on products liability, and a third cause of action for negligence arising out of premises liability.[1]

On January 10, 2014, Shell filed a motion for summary judgment or, in the alternative, summary adjudication of issues, asserting it owed no duty of care to Beckering. Relying on *Campbell*, *supra*, 206 Cal.App.4th 15, Shell contended the premises liability claim was barred as a matter of law because a property owner has no duty to protect family members of workers from secondary (off site) exposure to asbestos carried home on the worker's clothing. "Even though it might be foreseeable that a family member could conceivably come into contact with asbestos fibers brought home on the worker's clothing, the [*Campbell*] court analyzed the claim under the *Rowland v. Christian* factors and concluded that no legal duty of care existed as between the premises owner and the potentially exposed family member."

In opposition, Beckering argued *Campbell* was distinguishable because in that case, the connection between the plaintiff's injury and defendant Ford's conduct was too attenuated to support a duty of care; in *Campbell*, there was no

---

[1] Beckering did not oppose Shell's motion for summary adjudication with respect to the first and second causes of action, so only the third cause of action for premises liability remains in issue.

evidence that Ford provided the insulation used by the insulation subcontractor, or that Ford had exercised any control over the insulation work performed by the subcontractor. Here, in contrast, Beckering's husband was an employee of Shell and he performed work under Shell's direct and unfettered control.

Beckering further argued that application of the *Rowland* factors did not support an exception to the general duty of reasonable care. She asserted that the causal link between asbestos exposure and mesothelioma is well established and the health risks of household exposure have been known for decades, making the harm foreseeable. Further, there "is moral blame attached to Shell's conduct as well, when one considers the fact that this disease was preventable by simple hygiene measures . . . . The burden on Shell to educate its employees about known asbestos hazards, issue warnings and instructions, implement dust suppression and control measures, and provide mandatory laundering services was minimal and inexpensive. Further, the breach of Shell's duty sounds in negligence, an insurable risk. (Ins. Code, § 533.) The *Rowland* factors, including the factors of foreseeability and closeness of connection, all weigh in favor of finding against an exception to the general duty of reasonable care."

On February 14, 2014, the matter came on for hearing. The trial court ruled *Campbell* "does provide a bright-line that provides for no legal duty by a property owner to a family of a worker." On March 10, 2014, the trial court entered an order granting Shell's motion for summary judgment. This appeal followed.

In *Beckering I*, this court affirmed. "Guided by *Campbell*, we conclude[d] that based upon the *Rowland* public policy

factors, a premises owner has no duty to protect a family member from secondary exposure to asbestos off the premises arising from her association with a family member who wore asbestos-contaminated work clothes home. To hold otherwise would impose limitless liability on premises owners." (*Beckering I*, slip opn., at pp. 2-3.)

On February 11, 2015, the Supreme Court granted review and deferred the matter "pending consideration and disposition of a related issue in *Haver v. BNSF Railway Co.*, S219919."

On December 1, 2016, the Supreme Court issued its opinion in *Kesner*, *supra*, 1 Cal.5th 1132, a consolidated decision which addressed both *Kesner v. Superior Court* (S219534) and *Haver v. BNSF Railway* (S219919). The Supreme Court held "the duty of employers and premises owners to exercise ordinary care in their use of asbestos includes preventing exposure to asbestos carried by the bodies and clothing of on-site workers. Where it is reasonably foreseeable that workers, their clothing, or personal effects will act as vectors carrying asbestos from the premises to household members, employers have a duty to take reasonable care to prevent this means of transmission. This duty also applies to premises owners who use asbestos on their property, subject to any exceptions and affirmative defenses generally applicable to premises owners, such as the rules of contractor liability. Importantly, we hold that this duty extends only to members of a worker's household. Because the duty is premised on the foreseeability of both the regularity and intensity of contact that occurs in a worker's home, it does not extend beyond this circumscribed category of potential plaintiffs." (*Kesner*, *supra*, 1 Cal.5th at p. 1140.)

On March 22, 2017, the Supreme Court transferred the instant matter back to this court with directions to vacate our earlier decision and to reconsider the cause in light of *Kesner*, *supra*, 1 Cal.5th 1132. We placed the matter back on calendar.

DISCUSSION

1. *Pursuant to* Kesner*, Shell owed Beckering a duty of care, requiring reversal of the summary judgment.*

"We all have the duty to use due care to avoid injuring others. (*Knight* [*v. Jewett* (1992)] 3 Cal.4th [296,] 315.) Civil Code section 1714, subdivision (a), provides that '[e]very one is responsible . . . for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself.' " (*Neighbarger v. Irwin Industries, Inc.* (1994) 8 Cal.4th 532, 536.) Any "exception to the general rule must be based on statute or clear public policy. (*Rowland v. Christian* (1968) 69 Cal.2d 108, 112.)" (*Neighbarger*, *supra*, at p. 537.)

In the *Rowland* decision, the Supreme Court identified several considerations that, when balanced together, may justify a departure from the fundamental principle embodied in Civil Code section 1714: "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Rowland*, *supra*, 69 Cal.2d at p. 113.)

Kesner explained that "because 'the general duty to take ordinary care in the conduct of one's activities' applies to the use of asbestos on an owner's premises or in an employer's manufacturing processes, 'the issue is also properly stated as whether a categorical exception to that general rule should be made' exempting property owners and employers from potential liability to individuals who were exposed to asbestos by way of employees carrying it on their clothes or person.' [Citation.] . . . [W]e will not 'carv[e] out an entire category of cases from th[e] general duty rule' of [Civil Code] section 1714, subdivision (a), unless doing so 'is justified by clear considerations of policy.' " (*Kesner*, *supra*, 1 Cal.5th at p. 1144.)

Kesner found that "proper application of the *Rowland* factors supports the conclusion that defendants had a duty of ordinary care to prevent take-home asbestos exposure. Such exposure and its resulting harms to human health were reasonably foreseeable to large-scale users of asbestos by the 1970s, and the OSHA Standard affirmed the commonsense reality that asbestos fibers could be carried on the person or clothing of employees to their homes and could be inhaled there by household members. Businesses making use of asbestos were well positioned, relative to their workers, to undertake preventive measures, and [defendants] cite no evidence to suggest such measures would have been unreasonably costly. Although the lawful use of asbestos is not inherently reprehensible, no state policy promotes or specially protects it. We are mindful that recognizing a duty to all persons who experienced secondary exposure could invite a mass of litigation that imposes uncertain and potentially massive and uninsurable burdens on defendants, the courts, and society. But this concern does not clearly justify a

categorical exemption from liability for take-home exposure. 'The law is not indifferent to considerations of degree' [citation], and the foreseeability of take-home exposure and associated risk of injury are at their maximum when it comes to members of an employee's household. Accordingly, we hold that defendants owed the members of their employees' households a duty of ordinary care to prevent take-home exposure and that this duty extends no further. We disapprove *Campbell v. Ford Motor Co.*, *supra*, 206 Cal.App.4th 15, 141 Cal.Rptr.3d 390, and *Oddone v. Superior Court* [(2009)] 179 Cal.App.4th 813, to the extent they are inconsistent with this opinion." (*Kesner*, *supra*, 1 Cal.5th at p. 1156.)

Kesner emphasized "that an employer's or property owner's duty to prevent take-home exposure extends only to members of a worker's household, i.e., persons who live with the worker and are thus foreseeably in close and sustained contact with the worker over a significant period of time. To be sure, there are other persons who may have reason to believe they were exposed to significant quantities of asbestos by repeatedly spending time in an enclosed space with an asbestos worker—for example, a regular carpool companion. But any duty rule will necessarily exclude some individuals who, as a causal matter, were harmed by the conduct of potential defendants. By drawing the line at members of a household, we limit potential plaintiffs to an identifiable category of persons who, as a class, are most likely to have suffered a legitimate, compensable harm." (*Kesner*, *supra*, 1 Cal.5th at pp. 1154-1155.)[2]

---

[2] *Kesner* also noted the narrow scope of the issue before it, stating, "[t]he only issue on which we granted review was whether a duty exists to prevent take-home exposure. We have

Applying these principles to the instant case, we readily conclude Shell owed Beckering a duty of care to protect her from secondary exposure to asbestos. Beckering, whose husband was a Shell employee, was a member of the worker's household and thus was "foreseeably in close and sustained contact with the worker over a significant period of time." (*Kesner*, *supra*, 1 Cal.5th at p. 1155.) Because Shell owed Beckering a duty of care, it was not entitled to summary judgment on that basis.

---

no occasion to address other arguments defendants might make to defeat liability. It must be remembered that a finding of duty is not a finding of liability. To obtain a judgment, a plaintiff must prove that the defendant breached its duty of ordinary care and that the breach proximately caused the plaintiff's injury, and the defendant may assert defenses and submit contrary evidence on each of these elements." (*Kesner*, *supra*, 1 Cal.5th at p. 1157.) Here, as in *Kesner*, we are solely concerned with the element of duty.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to deny the motion for summary judgment. Beckering shall recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.