

6-6-2020

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Recommended Citation

Kelsey Dayton, *PREVIEW; Dannels v. BNSF Ry. Co.: Does the Federal Employers Liability Act preempt a former employee's bad-faith claims arising under Montana law?*, 80 Mont. L. Rev. Online 127 (2020), https://scholarship.law.umt.edu/mlr_online/vol80/iss1/16.

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PREVIEW; *Dannels v. BNSF Ry. Co.*: Does the Federal Employers Liability Act preempt a former employee’s bad-faith claims arising under Montana law?

Kelsey Dayton*

Oral argument is scheduled for 9:30 a.m. on June 10, 2020, to be conducted telephonically. Appearing for the Appellant, BNSF Railway Company, is Andrew S. Tulumello, Jeffrey Wayne Hedger, and Michelle T. Friend. Appearing for the Appellee Robert Dannels is Deepak Gupta, Dennis P. Conner, and Keith D. Marr. Appearing for the State of Montana is Montana Attorney General Timothy Charles Fox.

I. INTRODUCTION

This case presents the question of whether the Federal Employer’s Liability Act (“FELA”) preempts an employee’s bad faith claims arising under Montana law after the underlying FELA cause of action has been settled.

II. FACTUAL AND PROCEDURAL BACKGROUND

FELA holds railroad companies engaging in interstate commerce liable for damages for employees injured or killed on the job.¹

A workplace injury permanently disabled long-time BNSF Railway Company (“BNSF”) employee Plaintiff Robert Dannels in 2010 when the vehicle he was operating struck a steel wellhead buried under the snow.² BNSF denied liability for Dannels’ injuries and he sued under FELA.³ A jury found in Dannels’ favor and after the court denied BNSF’s motion for a new trial, the parties settle for the full verdict amount: \$1.7 million.⁴

Six months after setting the case, in January 2014, Dannels filed suit alleging BNSF violated the Unfair Trade Practices Act (“UTPA”) and Montana common law when it failed to defend his FELA claim in good faith.⁵ Specifically, he claimed that a reasonable investigation by BNSF would have revealed its liability for his injuries as early as May 2010, and that, since liability was reasonably clear, the company had a duty to pay lost wages.⁶ Additionally, Dannels alleged, once litigation commenced, BNSF continued to violate its duty to effectuate a prompt, fair, and

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¹ 45 U.S.C. § 51 (2018).

² Appellant’s Opening Br. at 1, *Dannels v. BNSF Ry. Co.*, (June 13, 2018) (No. DA 19-03-0343).

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.* at 4.

⁶ *Id.*

equitable settlement, which allegedly breached the company's obligations as a self-insured employer under Montana common law and the UTPA.⁷ Dannels seeks damages for his mental distress, interest, and expenses.⁸ He also seeks punitive damages for BNSF's "actual fraud and malice" in routinely using these "illegal and deceitful" settlement practices.⁹

BNSF moved for summary judgment and argued FELA preempts the claims.¹⁰ The district court denied the motion relying on *Reidelbach v. Burlington Northern & Santa Fe Railway Co.*¹¹ The Montana Supreme Court denied two petitions from BNSF for a writ of supervisory control, and the parties entered into a stipulated final judgment preserving BNSF's right to appeal the question whether Dannels' claims are preempted by FELA.¹² BNSF filed a timely appeal.¹³

Justice McKinnon recused herself at Dannels' objection to her presiding over the proceedings due to her son-in-law working at Garlington, Lohn, & Robinson, a firm originally involved in the case.¹⁴ Judge Amy Eddy will replace her for the June 10 oral argument.¹⁵

III. SUMMARY OF ARGUMENTS

A. Appellant BNSF's Argument

The Appellant argues that Dannels' bad-faith claims are preempted by FELA because the Act is the exclusive federal remedy for railroads' liability to employees injured on the job, as well as the measure of damages recoverable by employees and that Montana's bad-faith regime undermines FELA.¹⁶

The Appellant notes that Montana laws require the employer to effectuate prompt, fair and equitable settlements of a claim in which liability is reasonably clear, and advance medical expenses and lost wages if and when liability becomes reasonably clear.¹⁷ This, the Appellant argues, imposes duties on FELA employers that the Act itself does not,

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.* at 2; 60 P.3d 418 (2002) (holding FELA did not expressly or impliedly preempt a former employee's cause of action under state law).

¹² Appellant's Opening Br., *supra* note 2, at 2.

¹³ *Id.* at 3.

¹⁴ Order - Recusal of Justice McKinnon and replacing her with Hon. Amy Eddy for the oral argument scheduled for June 10, 2020, April 27, 2020, DA 19-0343.

¹⁵ *Id.*

¹⁶ Appellant's Opening Br., *supra* note 2, at 10.

¹⁷ *Id.* at 9 (quoting MONT. CODE ANN. § 33-18-201(6) (2019)).

and that are not required in other states.¹⁸ The Appellant asserts that had Congress intended FELA employers be required to settle FELA claims when liability was reasonably clear, it would have included it in the Act—but Congress did not.¹⁹ The Appellant argues that Montana law impermissibly extends liability beyond FELA’s remedial framework and these unique requirements obliterate the national uniformity Congress intended FELA establish.²⁰ Additionally, the Appellant argues, Dannels already received damages for his injury and this suit “results from, is derived from, and depends entirely on” that injury and his voluntary agreement to settle the claim—all of which are issues exclusively governed by federal law, and FELA does not provide for the damages Dannels now seeks.²¹

The Appellant also argues that the Montana’s Supreme Court’s decision in *Reidelbach*, which held that FELA does not preempt certain bad-faith claims premised on an employer’s defense of a FELA suit, does not save Dannels’ claims.²² The Appellant contends that the fact that the plaintiff had not entered into a release agreement with BNSF in *Reidelbach* is a critical difference that distinguishes the case from the one at hand, where Dannels had executed a release with BNSF in connection to the \$1.7 million FELA settlement.²³ The Appellant further argues that if the current case is not distinguishable from *Reidelbach*, the Court should overrule *Reidelbach* because it failed to acknowledge U.S. Supreme Court decisions that delineate FELA’s expansive preemptive scope.²⁴ *Reidelbach*, according to the Appellant, did not grapple with controlling precedent, rests on faulty reasoning, and allows state law to erode congressional objectives embodied in FELA, and therefore the Court should set the decision aside.²⁵

B. Appellee Robert Dannels’ Argument

Dannels argues that those who handle insurance claims in Montana have an obligation to do so fairly, and that these claims handling rules apply to BNSF and do not alter the rules governing railroad liability.²⁶ Dannels contends that in *Reidelbach*, the Court rejected the notion that BNSF’s post-injury claims-handling practices are exempt from application of state and federal law.²⁷ He argues that BNSF bears the burden to overcome the presumption against preemption in an area of

¹⁸ *Id.* at 11.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 10.

²² *Id.* at 12.

²³ *Id.* at 13.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Appellee’s Resp. Br. at 13, *Dannels v. BNSF Ry. Co.*, (June 13, 2018) (No. DA 19-03-0343).

²⁷ *Id.* at 16.

traditional state regulation because preemption is an affirmative defense.²⁸ Dannels asserts that BNSF ignores its burden and provides little legal framework for its preemption analysis.²⁹

Dannels contends that the UTPA is a consumer protection law that regulates an area historically of “local concern,” which Montana legislators passed to regulate the insurance industry.³⁰ According to Dannels, the plain language of the Act ensures state law could not be used to exempt railroad employers from liability for employee injuries, but does not supplant remedial state laws that grant former employees unrelated rights of action against their ex-employers, particularly as they relate to insurance and claims-handling.³¹ Dannels concludes that BNSF cannot overcome the presumption of implied preemption because Congress has not occupied the field, the state law does not conflict with federal law, and the state law does not create obstacles to the congressional purpose of the federal law.³²

Dannels further contends that BNSF fails to distinguish this case with that of precedent-setting *Reidelbach*.³³ Dannels argues that like *Reidelbach*, his state law tort claims are not protected nor prohibited by FELA; that the state has an interest in protecting its citizens from bad faith claims practices and the infliction of intentional emotional injury; and there is not a risk that the state cause of action would interfere with the administration of FELA.³⁴ Dannels further argues that by bringing his UTPA claim after litigating his FELA claim, he addressed the Court’s concern in *Reidelbach*, about mixing FELA and state law claims where the railroad was trying to, or actually getting, the claimant to execute a FELA waiver.³⁵ Additionally, Dannels argues that if the Court overruled *Reidelbach*, it would undermine the Court’s body of law holding that UTPA claims are separate and distinct from underlying causes of action, and would undermine the purpose of Montana’s bad-faith laws.³⁶

IV. ANALYSIS

The Court has already determined in *Reidelbach* that FELA does not expressly preempt former employees’ causes of action, nor does it impliedly preempt former employees’ causes of actions by occupying the

²⁸ *Id.*

²⁹ *Id.* at 18.

³⁰ *Id.* at 17.

³¹ *Id.* at 19–20.

³² *Id.* at 36.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 37.

³⁶ *Id.* at 38.

field, and FELA does not conflict with state law claims.³⁷ The two questions the Court must determine in this case is whether it should overturn *Reidelbach*, and if not, whether the analysis in *Reidelbach* applies to this instant case.³⁸

The Court will likely not overrule *Reidelbach*. In *Reidelbach*, the Court did an extensive analysis to determine whether a longtime BNSF employee who suffered back injuries at work that eventually forced him to quit, could pursue a FELA claim and state law claims that alleged BNSF engaged in unfair, dilatory and fraudulent claims practices.³⁹ The Court held the Plaintiff's claims of intentionally-inflicted, non-physical injury experienced outside his employment are beyond the scope of the railroad's FELA regulation and are not impliedly preempted by the FELA.⁴⁰ The Court then used a three-part test to determine if FELA precluded a claim brought under state law:

1. Was the underlying act or conduct protected or permitted by the federal statute?
2. Did the State have "an overriding state interest" in protecting its citizens from the complained of actions and was the state's interest "deeply rooted in local feeling and responsibility?" and
3. What was the risk that the state cause of action would interfere with the effective administration of the national labor policy?⁴¹

Applying the test, the Court found that the Plaintiff's state law tort claims were neither protected nor prohibited by FELA; the State had an overriding interest in protecting its citizens from fraudulent, malicious, and bad faith claims practices and the infliction of intentional emotional injury; and there was no risk that the state cause of action interfered with FELA administration.⁴² The Court thereby held that FELA did not preempt state law claims.⁴³

The factors upon which the Court rested this opinion have not changed, and the Appellant gives no novel arguments, but simply asserts the Court's decision was wrong. The decision is therefore more likely to rest on whether the present case is distinguishable from *Reidelbach*.

In *Reidelbach*, the Court found that the fact the Plaintiff did not enter into a release agreement with BNSF was critical because an executed

³⁷ *Reidelbach v. Burlington N. and Santa Fe Ry. Co.*, 60 P.3d 418 (Mont. 2002).

³⁸ Appellant's (BNSF) Opening Br., *supra* note 1, at 12-13

³⁹ *See generally Reidelbach*, 60 P.3d 418.

⁴⁰ *Id.* at 425.

⁴¹ *Id.* at 429 (using test from *Farmer v. Carpenters*, 430 U.S. 290 (1977)).

⁴² *Id.* at 430.

⁴³ *Id.*

release defines and potentially compromises the amount of damages an injured employee receives for his or her physical injury, establishes negligent liability, and assigns a monetary value to the work-related injury.⁴⁴ That release is linked inextricably to the FELA claim.⁴⁵ Here, Dannels' FELA claim was settled and an agreement is in place.⁴⁶ However, the Court in *Reidelbach* also noted it considered whether the Plaintiff's state law claims were distinct and separate from his physical injury FELA claim, which would be decided separately under FELA law.⁴⁷ The Court noted that the railroad's settlement practices do not arise from the railroad's negligence in the workplace and do not influence the amount of the FELA recovery in court.⁴⁸ Additionally, proof of his physical on-the-job injury and the railroad's alleged negligence are not elements of his state law claims.⁴⁹

In the present case, because Dannels' state law claims are also separate from the physical injury claims he brought under FELA, and because his FELA case was already decided, a decision in his current case will not impact the FELA recovery. Looking at all these factors, the Court will likely hold that the case at hand is not distinguishable from *Reidelbach*.

V. CONCLUSION

The Court will likely affirm the district court's dismissal of BNSF's motion for Summary Judgment. It will likely affirm its earlier decision in *Reidelbach* that FELA does not automatically preempt state law causes of actions. And while it will likely find the current case is not distinguished from *Reidelbach*, even if it does, the opinion will provide greater clarity to how the Court evaluates the validity of state law causes of action with underlying FELA claims on a case-by-case basis.

⁴⁴ *Id.* at 429.

⁴⁵ *Id.*

⁴⁶ Appellant's Opening Br., *supra* note 2, at 12–13.

⁴⁷ *Reidelbach*, 60 P.3d at 429.

⁴⁸ *Id.*

⁴⁹ *Id.*