

Moser v. State of Nebraska

Additional Case Names

@ 9:45am

Case Number

S-19-0726

Case Audio

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Call Date

April 1, 2020

Case Time

9:00 AM

Court Number

Johnson

Case Location

Lincoln

Court Type

District Court

Case Summary

S-19-0726 Telena Moser, Personal Representative of the Estate of Terry L. Berry, Jr., deceased (Appellant) v. State of Nebraska

Johnson County District Court, Judge Rick Shreiner

Attorneys: Thomas J. Monaghan & Rodney C. Dahlquist, Jr. (Dornan, Troia, Howard, Breitreutz & Conway, PC, LLO, for Appellant); James D. Smith (Solicitor General, for Appellee)

Civil: Nebraska State Tort Claims Act; Negligence

Proceedings Below: In its order entered on July 1, 2019, the trial court determined that 1) the decision to house Berry and Schroeder together was discretionary, as that term is employed within the STCA context; 2) the decision to double bunk Berry and Schroeder was a policy level decision, and not operational activity to implement the policy of double bunking; 3) the State acted with "due care" when it failed to investigate or confirm that Berry was reasonably safe from assault at the hands of Schroeder; and 4) Appellant's action fell within the discretionary function exception to the STCA, thereby granting the State's motion to dismiss.

Issues: Whether the district court erred 1) when it implicitly found that mandatory safety regulations designed to prevent inmate assault were discretionary rather than mandatory; 2) in implicitly finding that the decision by the TSCI staff to double bunk Berry and Schroeder was a "policy" decision rather than an "operational" decision; 3) in finding that the discretionary function exception applied to the decision to double bunk Berry with Schroeder, and to maintain such housing despite warnings regarding Berry's safety; 4) by implicitly finding that the State acted with "due care" when it placed Berry with Schroeder, and when it maintained this housing despite warnings regarding Barry's safety; and 5) by granting

Appellee's motion to dismiss predicated on Neb. Rev. Stat. § 81-2,219(1).

Schedule Code

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