

IN THE DISTRICT COURT OF WHEELER COUNTY, NEBRASKA

**BRENDA HENKENIUS, Personal
Representative of the Estate of Edward J.
Henkenius,**

Plaintiff,

vs.

**COUNTY OF WHEELER, NEBRASKA, a
political subdivision, et al.,
Defendants.**

Case No. CI98-6

**ORDER DENYING MOTION
FOR SUMMARY JUDGMENT**

DATE OF HEARING: October 21, 1999.
DATE OF DECISION: November 29, 1999.
PLACE OF HEARING: Holt County Courthouse, O'Neill, Nebraska, by agreement of parties.
APPEARANCES:
For plaintiff: Rodney W. Smith without plaintiff.
For defendants: Mark D. Fitzgerald without defendant Sears.
SUBJECT OF ORDER: defendants' motion for summary judgment.
FINDINGS: The court finds and concludes that:

1. The court considers the defendants' motion for summary judgment. The applicable principles of law are well-known:

a. Summary judgment is proper only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Parker v. Lancaster Cty. School Dist. No. 001*, 256 Neb. 406, ___ N.W.2d ___ (1999).

b. The court views the evidence in a light most favorable to the party against whom the judgment is sought and gives such party the benefit of all reasonable inferences deducible from the evidence. *Id.*

c. On a motion for summary judgment, the question is not how a factual issue is to be decided but whether any real issue of material fact exists. *Id.*

d. Where reasonable minds may differ as to whether an inference supporting an ultimate conclusion can be drawn, summary judgment should not be granted. *Id.*

2. Viewed in the light most favorable to the plaintiff, the court is not persuaded that the defendants have met their burden to show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the defendants are entitled to judgment as a matter of law.

3. Because of the way in which the court is required to view the evidence, a mere inference is sufficient to defeat the motion. While such inference might not be sufficient to meet a burden of proof at trial, it can be sufficient to prevent the granting of a motion for summary judgment.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The defendants' motion for summary judgment is denied.

Entered: November 29, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19____ by _____.
- : Note the decision on the trial docket as: [date from order] Signed
"Order Denying Motion For Summary Judgment" entered.
Done on _____, 19____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel, District Judge