

Firm liable for rape by employee

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Texas Supreme Court rules vacuum maker should have required a background check on salesman

AUSTIN - The Texas Supreme Court sided Thursday with a woman who accused a door-to-door vacuum-cleaner salesman of raping her, holding his employer liable for her injuries.

The divided court ruled that the Kirby Co. should have required its distributor to do a background check before hiring salesman Mickey Carter, who had previous complaints of sexual misconduct.

"I hope this decision will cause Kirby to change its ways to make sure that criminals are not sent into people's homes to sell Kirby vacuum cleaners," Dena Kristi Read, the rape victim, said in a statement. Mrs. Read said last year that she was willing to have her name used because she believes she can have a bigger impact that way.

I also hope that it will prevent another woman from having to go through what my family and I have been through." Justice Raul Gonzalez, writing for the 6-3 majority, said Kirby's way of doing business - selling its products in customers' homes - posed a potential danger.

"Kirby dealers, required to do in-home demonstration, gain access to that home by virtue of the Kirby name. A person of ordinary intelligence should anticipate that an unsuitable dealer would pose a risk of harm," he wrote.

David Kutik, attorney for Kirby, said the decision sets a dangerous precedent.

"Any business that hires any independent contractors is subject to a lawsuit . . . if they do something to harm someone else," Mr. Kutik said. "It's a very unfortunate decision in that regard."

Kirby has argued that the distributor, which hired Mr. Carter, was negligent for failing to check the criminal records of its sales staff. The company said it's their duty to hire competent distributors, but it's the distributors' duty to hire competent salespeople.

The court stretched the liability too far in including them, Mr. Kutik said.

Mrs. Read told authorities that Mr. Carter raped her in her Seguin home as her children slept in the next room.

Mr. Carter wasn't prosecuted for the 1993 sexual assault. He appeared before a judge, and all the parties involved agreed it would be easier to revoke his probation on an unrelated charge of indecency with a child than to go through a criminal trial, said Larry Wright, Mrs. Read's lawyer in the civil matter.

However, the Supreme Court concluded that Mr. Carter did rape Mrs. Read. "That afternoon, Carter returned to Read's home, where he sexually assaulted her," Justice Gonzalez wrote in his opinion.

Justice Greg Abbott, writing a dissenting opinion, said, "Kirby retained control over where the work was to be performed, not over who was to perform that work."

The Supreme Court upheld \$160,000 in actual damages, which Mr. Wright said has grown to nearly \$200,000 with interest. But the court also agreed with the 3rd Court of Appeals, which threw out \$800,000 in punitive damages levied against Kirby.

"I am disappointed, though, that the jury's verdict punishing Kirby has been ignored, and I hope that this does not prevent Kirby from making the necessary changes," Mrs. Read said.

Ron Aaron, a victims' rights activist, said the Supreme Court's rejection of the punitive damages demonstrates an "anti-victim, anti-consumer, pro-business" leaning.

"It puts people in danger because sometimes these companies may need high punitive damages to change their practices," Mr. Aaron said.