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standards which protect an individual's constitutionally protected liberty interest. It does not violate the subject's due process rights.

CONCLUSION

The DDCCA is constitutional, and the decision of the district court is affirmed.

AFFIRMED.

DAVID DOBROVOLNY, APPELLANT, V.
FORD MOTOR COMPANY, APPELLEE.
793 N.W.2d 445

Filed February 4, 2011. No. S-09-1118.

1. **Motions to Dismiss: Pleadings: Appeal and Error.** An appellate court reviews a district court's grant of a motion to dismiss de novo, accepting all the allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party.
2. **Products Liability: Torts: Negligence: Strict Liability: Damages.** The purchaser of a product pursuant to contract cannot recover economic losses from the seller manufacturer on claims in tort based on negligent manufacture or strict liability in the absence of physical harm to persons or property caused by the defective product.
3. **Products Liability: Contracts: Damages.** Whether the damage occurs gradually over time, or through an abrupt, accident-like event, a purchaser is confined to recovery in contract if the loss is purely economic.

Petition for further review from the Court of Appeals, IRWIN, SIEVERS, and CARLSON, Judges, on appeal thereto from the District Court for Brown County, MARK D. KOZISEK, Judge. Judgment of Court of Appeals reversed, and cause remanded with directions.

Thomas J. Walsh, Jr., of Walsh Law, P.C., for appellant.

John A. Svoboda, of Gross & Welch, P.C., L.L.O., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

HEAVICAN, C.J.

INTRODUCTION

Ford Motor Company (Ford) filed a petition for further review in response to the decision of the Nebraska Court of Appeals. The Court of Appeals reversed the decision of the Brown County District Court granting Ford's motion to dismiss. We granted Ford's petition for further review and reverse the decision of the Court of Appeals.

FACTS

David Dobrovolny purchased his 2005 Ford F-350 pickup truck on February 28, 2005. The truck caught fire in Dobrovolny's driveway on April 16, 2006. No one was injured, and no property other than the truck was damaged, but the truck was completely destroyed. Dobrovolny did not file suit until May 20, 2009. Dobrovolny alleged negligence, breach of the warranty of merchantability, and strict liability on the part of Ford. Dobrovolny sought to recover the cost of the truck. Ford filed a motion to dismiss, which the district court granted.

The district court found that *National Crane Corp. v. Ohio Steel Tube Co.*[1] prohibited Dobrovolny from recovering on the negligence and strict liability claims, because Dobrovolny did not allege any damage other than that to the truck. Under *National Crane Corp.*, the economic loss doctrine provides that a plaintiff cannot recover under strict liability if the only damages claimed are for "'"inadequate value, costs of repair and replacement . . . or consequent loss of profits—without any claim of personal injury or damage to other property . . . ."'"[2] The district court also found that Neb. U.C.C. § 2-725 (Reissue 2001) provides that any breach of contract claim must be commenced within 4 years after the cause of action accrues, which would be at the time of purchase. Dobrovolny would have had to pursue a breach of contract claim prior to February 28, 2009.

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[1] *National Crane Corp. v. Ohio Steel Tube Co.*, 213 Neb. 782, 332 N.W.2d 39 (1983).

[2] *Id.* at 786, 332 N.W.2d at 42.

Dobrovolny appealed, and the Court of Appeals reversed the decision of the district court.[3] The Court of Appeals distinguished Dobrovolny's case from that in *National Crane Corp.* and *Hilt Truck Line v. Pullman, Inc.*[4] Citing *Arabian Agri. Servs. Co. v. Chief Indus., Inc.*,[5] the Court of Appeals determined that the failure and the "sudden, violent event"[6] could be one and the same and that Dobrovolny had presented enough evidence of a sudden, violent event to overcome the motion to dismiss. Ford petitioned for further review, alleging that the Court of Appeals had ignored standing Nebraska law. We granted Ford's petition and now reverse the decision of the Court of Appeals.

ASSIGNMENT OF ERROR

Ford assigns that the Court of Appeals erred when it held that the economic loss doctrine does not apply where a product self-destructs without causing damage to persons or other property.

STANDARD OF REVIEW

[1] An appellate court reviews a district court's grant of a motion to dismiss de novo, accepting all the allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party.[7]

ANALYSIS

The sole issue in this case is whether the economic loss doctrine applies when a product self-destructs without causing damage to persons or other property. In determining that the doctrine did not apply, the Court of Appeals distinguished

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[3] See *Dobrovolny v. Ford Motor Co.*, 18 Neb. App. 483, 785 N.W.2d 858 (2010).

[4] *Hilt Truck Line v. Pullman, Inc.*, 222 Neb. 65, 382 N.W.2d 310 (1986).

[5] *Arabian Agri. Servs. Co. v. Chief Indus., Inc.*, 309 F.3d 479 (8th Cir. 2002).

[6] *Dobrovolny, supra* note 3, 18 Neb. App. at 487, 785 N.W.2d at 858.

[7] *McCully, Inc. v. Baccaro Ranch*, 279 Neb. 443, 778 N.W.2d 115 (2010).

National Crane Corp. and *Hilt Truck Line* and applied the reasoning in *Arabian Agri. Servs. Co.*[8]

In *National Crane Corp.*, the plaintiff purchased steel tubing from the defendant for use in the tilt cylinder mechanism of 1,232 cranes. The steel tubing eventually failed, and the plaintiff had to test and replace all potentially dangerous cylinders. The plaintiff filed suit to recover the economic losses associated with testing and replacing the steel tubing. We noted that "the purchaser of a product pursuant to contract cannot recover economic losses from the manufacturer under a claim of strict liability."[9] We went on to state:

> A majority of courts that have considered the applicability of strict liability to recover damages to the defective product itself have permitted use of the doctrine, at least where the damage occurred as a result of a sudden, violent event and not as a result of an inherent defect that reduced the property's value without inflicting physical harm to the product. . . . In essence, this court has reached the same result.[10]

[2] In *National Crane Corp.*, we determined that the only damages the plaintiff sought to recover were those incurred by replacing the defective product. We held that "the purchaser of a product pursuant to contract cannot recover economic losses from the seller manufacturer on claims in tort based on negligent manufacture or strict liability in the absence of physical harm to persons or property caused by the defective product."[11]

Hilt Truck Line presented a similar issue. In that case, the plaintiff contracted with the defendant for the construction and purchase of 30 trailers. After the trailers were put into service, problems with the side posts were noted and the trailers had to be repaired. The plaintiff sued to recover those costs, but its

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[8] *Arabian Agri. Servs. Co., supra* note 5.

[9] *National Crane Corp., supra* note 1, 213 Neb. at 787, 332 N.W.2d at 43.

[10] *Id.* at 789, 332 N.W.2d at 42.

[11] *Id.* at 790, 332 N.W.2d at 44.

case was deemed barred by the economic loss doctrine.[12] We stated that "in order to recover in strict liability for the cost of repairs to the product, there must be proof that a sudden, violent event occurred which aggravated the inherent defect or caused it to manifest itself."[13] Because the record showed no evidence of a sudden, violent event, the plaintiff could not recover in strict liability.

In the present case, the Court of Appeals distinguished Dobrovolny's claim from *National Crane Corp.* and *Hilt Truck Line* by finding that the fire which destroyed his truck was a sudden, violent event. Ford argued that a sudden, violent event must cause the failure; the failure itself cannot be the sudden, violent event. The Court of Appeals rejected that argument, relying on the reasoning in *Arabian Agri. Servs. Co*. In that case, the defendant built grain silos for the plaintiff. The silos collapsed, but no other property or persons were harmed. The plaintiff sued for damages in the federal district court for Nebraska under a variety of theories, including that of strict liability.

The defendant in *Arabian Agri. Servs. Co.* contended that under Nebraska law, a sudden, violent event must cause the failure, and that the failure itself cannot be considered the sudden, violent event. The Eighth Circuit rejected that argument, quoting from our opinion in *National Crane Corp.*:

> According to the Nebraska Supreme Court, it has, in essence, followed the "majority of courts that have considered the applicability of strict liability to recover damages to the defective product itself [and] have permitted use of the doctrine, at least where the damage occurred as a result of a sudden, violent event and not as a result of an inherent defect that reduced the property's value without inflicting physical harm to the product." . . . Here, [the] damages were not the result of a defect that merely reduced the value of the silos. Instead, the collapse of the silos could certainly be characterized as a

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[12] See *Hilt Truck Line, supra* note 4.

[13] *Id*. at 67, 382 N.W.2d at 312.

> "sudden, violent event" that inflicted "physical harm to the product."[14]

The Court of Appeals accepted the reasoning in *Arabian Agri. Servs. Co*. and found that Dobrovolny's situation closely mirrored the collapse of the silos. Assuming that the allegations in Dobrovolny's complaint were true, his truck spontaneously caught fire and was completely destroyed. The Court of Appeals found that the spontaneous destruction could be considered a sudden, violent act and that Dobrovolny could recover under a theory of strict liability.

Ford, however, argues that the Eighth Circuit and the Court of Appeals were in error. Ford points out that we relied heavily on the Restatement (Second) of Torts in *National Crane Corp.*, and in its petition for further review, Ford quotes the Restatement (Third) of Torts:

> A strong majority of courts have taken the position that the key to whether products liability law or commercial law principles should govern depends on the nature of the loss suffered by the plaintiff. If the plaintiff has suffered loss because the defective product simply malfunctioned or self-destructed, the loss is deemed economic loss within the purview of the Uniform Commercial Code . . . .[15]

Ford also points to *East River S.S. Corp. v. Transamerica Delaval*[16] as a leading case addressing the line between contract and tort law as it concerns products liability. In *East River S.S. Corp.*, the U.S. Supreme Court applied products liability to a case in admiralty. It portrayed the problem as whether "a commercial product injuring itself is the kind of harm against which public policy requires manufacturers to protect, independent of any contractual obligation."[17] The Supreme Court characterized the majority of courts as holding that strict liability cannot be imposed for damage to the product alone, while

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[14] *Arabian Agri. Servs. Co., supra* note 5, 309 F.3d at 484.

[15] Restatement (Third) of Torts: Products Liability § 21, Reporter's Note comment *d*. (1998).

[16] *East River S.S. Corp. v. Transamerica Delaval*, 476 U.S. 858, 106 S. Ct. 2295, 90 L. Ed. 2d 865 (1986).

[17] *Id*., 476 U.S. at 866.

the minority imposed liability.[18] The Supreme Court went on to state, "When a product injures only itself the reasons for imposing a tort duty are weak and those for leaving the party to its contractual remedies are strong."[19]

The Wyoming Supreme Court, following the decision in *East River S.S. Corp.*, expanded upon that reasoning:

> This rule is founded on solid policy justifications. The concern of tort law in the area of products liability has focused on the need to protect the purchaser or consumer, who often is not in a position to withstand the financial impact if he, or his property, is damaged by a defective product. The social need to spread the resulting, and often catastrophic, losses across a spectrum of consumers thus increasing the cost of the product is, however, substantially lessened when the injury is only to the product itself. Furthermore, this kind of loss relates essentially to the purchaser's benefit of the bargain which has been made between himself and the seller. The authorities recognize that the law of contracts is far better suited to deal with the dissatisfaction on the part of a purchaser under such circumstances.[20]

We find this reasoning to be both persuasive and consistent with our prior decisions in *National Crane Corp.* and *Hilt Truck Line*. As other courts have noted, insurance may be purchased to cover damage or destruction of a product should a consumer wish additional protection outside breach of warranty claims.[21]

[3] Furthermore, we find that the usage of the term "sudden, violent event" is unnecessarily confusing. We adopt the rule that disallows recovery in tort when the damages are to the product alone, following both the Restatement (Third) of Torts and the U.S. Supreme Court's decision in *East River S.S. Corp*. As the Supreme Court noted in *East River S.S. Corp.*:

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[18] *East River S.S. Corp., supra* note 16.

[19] *Id.*, 476 U.S. at 871.

[20] *Continental Ins. v. Page Engineering Co.*, 783 P.2d 641, 647 (Wyo. 1989).

[21] See *id.*

> Even when the harm to the product itself occurs through an abrupt, accident-like event, the resulting loss due to repair costs, decreased value, and lost profits is essentially the failure of the purchaser to receive the benefit of its bargain—traditionally the core concern of contract law. . . .
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> . . . .
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> . . . The maintenance of product value and quality is precisely the purpose of express and implied warranties. . . .
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> Contract law, and the law of warranty in particular, is well suited to commercial controversies of the sort involved in this case because the parties may set the terms of their own agreements.[22]

In this case, the only damage done was to Dobrovolny's truck, and therefore, the economic loss doctrine bars recovery under products liability law.

CONCLUSION

We find that the economic loss doctrine prevents recovery under a products liability theory where the damage is solely to the product. We therefore reverse the decision of the Court of Appeals and remand the matter with directions to reinstate the decision of the district court.

REVERSED AND REMANDED WITH DIRECTIONS.

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[22] *East River S.S. Corp., supra* note 16, 476 U.S. at 870-73.

CARGILL MEAT SOLUTIONS CORPORATION, APPELLEE, V. COLFAX COUNTY BOARD OF EQUALIZATION, APPELLANT.

798 N.W.2d 823

Filed February 4, 2011. No. S-09-1252.

1. **Jurisdiction: Appeal and Error.** A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.
2. **Statutes.** Statutory interpretation is a question of law.
3. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, an appellate court must determine whether it has jurisdiction.
4. **Statutes: Legislature: Intent: Appeal and Error.** In discerning the meaning of a statute, the Supreme Court gives effect to the purpose and intent of the