

SUPREME COURT OF ALABAMA

DiBiasi v. Joe Wheeler Elec. Membership Corp.

988 So. 2d 454 (Ala. 2008) · No. 1060848 · Decided January 11, 2008

SUMMARY

The Supreme Court of Alabama affirmed summary judgment for Joe Wheeler Electric Membership Corp. in a wrongful-death action arising from Dominic DiBiasi's electrocution by an uninsulated transmission line owned by another utility and attached to a Joe Wheeler pole. The court held that Joe Wheeler owed no duty of care because it did not own, install, maintain, or supply electricity through the line, and knowledge of the alleged dangerous condition alone was insufficient to impose a duty. The court also treated the wantonness claim as waived because it was not argued on appeal.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Per Curiam; Cobb, Chief Justice; Woodall, Justice; Smith, Justice; Parker, Justice
JURISDICTION	Alabama
DECIDED	January 11, 2008
DOCKET	1060848
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a Rule 54(b)-final summary judgment entered for Joe Wheeler in a wrongful-death action alleging negligence and wantonness.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The appellate court applies the same standard as the trial court, views the record in the light most favorable to the nonmovant, resolves reasonable doubts against the movant, and affords no presumption of correctness to legal conclusions or the selected legal standard.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	Narriman DiBiasi and Julia Brewer, as co-administratrixes of the estate of Dominic DiBiasi v. Joe Wheeler Electric Membership Corp.

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QUESTIONS PRESENTED

1. Whether Joe Wheeler owed Dominic a high and exacting duty of care merely because it was an electric utility and owned the pole to which another utility's transmission line was attached.
2. Whether Joe Wheeler's actual or constructive knowledge, or alleged reason to know, of the dangerous condition was alone sufficient to impose a duty of care.
3. Whether the Morgan factors supported imposing a negligence duty on Joe Wheeler based on its ownership of the utility pole and its relationship to Dominic.
4. Whether the trial court properly granted summary judgment for Joe Wheeler.
5. Whether the wantonness claim was preserved for appellate review.

HOLDINGS

1. Joe Wheeler did not owe Dominic the high and exacting duty applicable to a utility supplying electricity over its own transmission lines because Joe Wheeler merely supplied the pole, did not own or install the line, and did not supply the electricity that caused Dominic's death.
2. Even if Joe Wheeler knew or should have known of the dangerous condition created by Hartselle's transmission line, that knowledge alone was insufficient to impose a duty of care on Joe Wheeler.
3. The Morgan factors did not support imposing a duty of care on Joe Wheeler because its relevant activity was limited to allowing Hartselle to use its pole, there was no apparent relationship between Dominic and Joe Wheeler concerning the line, and the threatened harm was attributable to Hartselle's line rather than Joe Wheeler's pole-related activity.
4. Summary judgment for Joe Wheeler was proper because Joe Wheeler owed Dominic no duty of care and was entitled to judgment as a matter of law.
5. The wantonness claim was waived because the appellant made no apparent argument supporting it on appeal, so the court did not address that claim.

KEY QUOTATIONS

“Apart from premises liability, Alabama law does not support imposing a duty of care on a party based solely on that party's knowledge of the existence of a dangerous condition.” (at 463)

“Therefore, based on our review and application of the Morgan factors, we hold that Joe Wheeler did not owe a duty of care to Dominic.” (at 464)

FACTUAL BACKGROUND

Dominic DiBiasi was inspecting gutters on the roof of a residence when he grabbed an uninsulated 7,200-volt transmission line that ran above the house and was electrocuted. The line was owned, installed, controlled, and maintained by Hartselle Utilities, while it was attached under a joint-use agreement to a utility pole owned by Joe Wheeler. The estate alleged that Joe Wheeler's placement and use of its pole allowed the line to run dangerously close to the residence.

PROCEDURAL HISTORY

Dominic DiBiasi was electrocuted by an uninsulated high-voltage transmission line owned by Hartselle Utilities and attached to a utility pole owned by Joe Wheeler. The estate sued both utilities for negligence and wantonness. The trial court granted Joe Wheeler summary judgment, dismissed all claims against it with prejudice, and made the judgment final under Rule 54(b), Ala. R. Civ. P. The Supreme Court of Alabama affirmed, concluding that Joe Wheeler owed Dominic no duty of care; the wantonness claim was deemed waived because it was not argued on appeal.

DISPOSITION

affirmed

CASES CITED

- Pardue v. Potter, 632 So. 2d 470, 473 (Ala. 1994)
- Deutch v. Birmingham Post Co., 603 So. 2d 910 (Ala. 1992)
- Bogle v. Scheer, 512 So. 2d 1336 (Ala. 1987)
- Ex parte CSX Transportation, Inc., 938 So. 2d 959, 961-62 (Ala. 2006)
- West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)
- Prowell v. Children's Hospital of Alabama, 949 So. 2d 117, 128 (Ala. 2006)
- Ex parte General Motors Corp., 769 So. 2d 903, 909 (Ala. 1999)
- Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989)
- Ex parte Essary, Ms. 1060458, Nov. 2, 2007
- Ex parte Lumpkin, 702 So. 2d 462, 465 (Ala. 1997)
- Payton v. Monsanto Co., 801 So. 2d 829, 833 (Ala. 2001)
- Ex parte Alfa Mutual General Insurance Co., 742 So. 2d 182, 184 (Ala. 1999)
- Ex parte Graham, 702 So. 2d 1215, 1221 (Ala. 1997)
- Ford Motor Co. v. Burdeshaw, 661 So. 2d 236, 238 (Ala. 1995)
- Thompson v. Mindis Metals, Inc., 692 So. 2d 805, 807 (Ala. 1997)
- Morton v. Prescott, 564 So. 2d 913, 915 (Ala. 1990)
- City of Bessemer v. Brantley, 258 Ala. 675, 65 So. 2d 160, 165 (1953)
- Pritchett v. ICN Medical Alliance, Inc., 938 So. 2d 933, 937 (Ala. 2006)
- Taylor v. Smith, 892 So. 2d 887, 891-93 (Ala. 2004)
- Alabama Power Co. v. Matthews, 226 Ala. 614, 147 So. 889 (1933)

- Bloom v. City of Cullman, 197 Ala. 490, 73 So. 85 (1916)
- Alabama Power Co. v. Emens, 228 Ala. 466, 153 So. 729 (1934)
- Alabama Power Co. v. Cantrell, 507 So. 2d 1295, 1297 (Ala. 1986)
- Alabama Power Co. v. Brooks, 479 So. 2d 1169, 1172 (Ala. 1985)
- Bush v. Alabama Power Co., 457 So. 2d 350, 353-54 (Ala. 1984)
- Patrick v. Union State Bank, 681 So. 2d 1364, 1368 (Ala. 1996)
- Smitherman v. McCafferty, 622 So. 2d 322, 324 (Ala. 1993)
- Carvalho v. Toll Brothers & Developers, 143 N.J. 565, 675 A.2d 209, 214 (1996)
- Dominici v. Wal-Mart Stores, Inc., 606 So. 2d 555, 559 (La. Ct. App. 1992)
- Andrade v. Ellefson, 391 N.W.2d 836, 841 (Minn. 1986)
- Alabama Department of Corrections v. Thompson, 855 So. 2d 1016, 1021-22, 1025 (Ala. 2003)
- Hail v. Regency Terrace Owners' Association, 782 So. 2d 1271, 1274 (Ala. 2000)
- Moyer v. A.G. Gaston Motels, Inc., 499 So. 2d 1368, 1372 (Ala. 1986)
- Berkel & Co. Contractors, Inc. v. Providence Hospital, 454 So. 2d 496, 502 (Ala. 1984)
- The Dunes of GP, L.L.C. v. Bradford, 966 So. 2d 924 (Ala. 2007)
- Byrd v. Lamar, 846 So. 2d 334, 341 (Ala. 2002)
- Thompson v. Lee, 439 So. 2d 113, 116 (Ala. 1983)

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