

SUPREME COURT OF RHODE ISLAND

Flavia Linnea Borgo v. The Narragansett Electric Company d/b/a
National Grid et al.

Borgo · No. 2021-21-Appeal · Decided June 6, 2022

SUMMARY

The Rhode Island Supreme Court affirmed summary judgment for The Narragansett Electric Company in a negligence action arising from an eighteen-year-old trespasser’s severe injuries at an electrical substation. The court held that, under Rhode Island premises-liability law, an adult trespasser is owed no duty unless actually discovered in a position of peril, and that alleged repeated trespassing did not establish constructive discovery. The court also concluded that the cited Public Utilities Commission regulations did not create a duty owed to the plaintiff and that an alternative duty argument was waived.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Chief Justice Paul A. Suttell; Chief Justice Suttell; Justice Goldberg; Justice Robinson; Justice Lynch Prata
JURISDICTION	Rhode Island
DECIDED	June 6, 2022
DOCKET	2021-21-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the Providence County Superior Court's grant of the defendant's motion for summary judgment in a negligence action arising from injuries suffered while plaintiff was trespassing in an electrical substation.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence is viewed in the light most favorable to the nonmoving party, and summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. The existence of a legal duty is a question of law.
PRECEDENTIAL VALUE	Published opinion; precedential

PARTIES

Flavia Linnea Borgo v. The Narragansett Electric Company d/b/a
National Grid

TOPICS

premises liability

duty of care

summary judgment

standard of review

appellate procedure

PRACTICE AREAS

torts

premises liability

negligence

administrative law

civil procedure

QUESTIONS PRESENTED

1. Whether National Grid owed an adult trespasser a duty of care under Rhode Island premises-liability law absent actual discovery of the trespasser in a position of peril.
2. Whether Rhode Island Public Utilities Commission safety regulations created a duty of care running from National Grid to Borgo.
3. Whether National Grid's conduct as an electrical distributor independently created a duty under the factors identified in *Banks v. Bowen's Landing Corp.*
4. Whether the plaintiff's expert affidavit created a genuine issue concerning breach when no legal duty had been established.

HOLDINGS

1. Under Rhode Island law, a landowner owes an adult trespasser no duty of care unless the trespasser is actually discovered in a position of peril; constructive knowledge, repeated trespassing, or a beaten-path exception does not create such a duty. Because Borgo was not actually discovered, National Grid owed her no premises-liability duty.
2. The PUC regulations did not create a duty of care running from National Grid to Borgo because the regulations were not shown to be designed to protect adult trespassers or members of the general public injured inside an electrical facility.
3. The expert affidavit could not prevent summary judgment because evidence of breach is immaterial unless the plaintiff first establishes that the defendant owed a legal duty.

KEY QUOTATIONS

"Because it is undisputed that at the time of the accident plaintiff was an adult trespasser, under our well-settled law she was owed no duty unless she was actually discovered in a position of peril by National Grid."
(-14)

"Accordingly, because here the plaintiff has not shown the existence of a duty owed to her by National Grid through any of her alternative theories, summary judgment was not only proper, it was necessary, as evidence of a breach cannot be considered without first establishing a duty." (-20)

FACTUAL BACKGROUND

In April 2014, eighteen-year-old RISD student Flavia Linnea Borgo entered National Grid's active electrical substation with another student to take photographs for an art project. While inside, Borgo came into contact with electrical equipment and suffered severe injuries, including amputation of her left hand. She admitted for purposes of summary judgment that she was an adult trespasser, and there was no evidence that National Grid actually discovered her in a position of peril before the accident.

PROCEDURAL HISTORY

Borgo filed a negligence complaint in Providence County Superior Court in 2016. After discovery, National Grid moved for summary judgment on the ground that an adult trespasser was owed no duty of care as a matter of law. The Superior Court granted the motion and entered judgment for National Grid on October 14, 2020. The Supreme Court of Rhode Island affirmed after directing the parties to show cause why the appeal should not be summarily decided.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record shall be returned to the Superior Court.

CASES CITED

- Shorr v. Harris, as Trustee of Trust of Anna H. Blankstein, 248 A.3d 633, 636 (R.I. 2021)
- Lehigh Cement Co. v. Quinn, 173 A.3d 1272, 1275 (R.I. 2017)
- Midland Funding LLC v. Raposo, 222 A.3d 484, 486 (R.I. 2019)
- Limoges v. Nalco Company, 157 A.3d 567, 571 (R.I. 2016)
- Goodkin v. DeMaio, 664 A.2d 1119, 1120 (R.I. 1995) (mem.)
- Correia v. Bettencourt, 162 A.3d 630, 635 (R.I. 2017)
- Newstone Development, LLC v. East Pacific, LLC, 140 A.3d 100, 103 (R.I. 2016)
- Vicente v. Pinto's Auto & Truck Repair, LLC, 230 A.3d 588, 591-592 (R.I. 2020)
- Holley v. Argonaut Holdings, Inc., 968 A.2d 271, 274 (R.I. 2009)
- Lowney v. Canteen Realty, LLC, 252 A.3d 259, 262 (R.I. 2021)
- Ouch v. Khea, 963 A.2d 630, 633 (R.I. 2009)
- Berard v. HCP, Inc., 64 A.3d 1215, 1218 (R.I. 2013)
- Gushlaw v. Milner, 42 A.3d 1245, 1252 (R.I. 2012)
- Burton v. State, 80 A.3d 856, 860-861 (R.I. 2013)
- Hill v. National Grid, 11 A.3d 110, 113-115 (R.I. 2011)
- Cain v. Johnson, 755 A.2d 156, 160-161 (R.I. 2000)
- Previte v. Wanskuck Co., 90 A.2d 769, 770 (R.I. 1952)
- Mariorenzi v. Joseph DiPonte, Inc., 333 A.2d 127, 133 (R.I. 1975)

- *Tantimonico v. Allendale Mutual Insurance Company*, 637 A.2d 1056, 1057 (R.I. 1994)
- *Berman v. Sitrin*, 991 A.2d 1038, 1042, 1049-1051 (R.I. 2010)
- *Yattaw v. City of East Providence*, 203 A.3d 1167, 1173 (R.I. 2019)
- *Roy v. State*, 139 A.3d 480, 490 (R.I. 2016)
- *Carlson v. Town of South Kingstown*, 111 A.3d 819, 823 (R.I. 2015)
- *Wolf v. National Railroad Passenger Corp.*, 697 A.2d 1082, 1086 (R.I. 1997)
- *Zoubra v. New York, New Haven and Hartford Railroad Company*, 150 A.2d 643, 645 (R.I. 1959)
- *Boday v. N. Y., N. H. & H. R. R. Co.*, 165 A. 448, 449 (R.I. 1933)
- *Paquin v. Tillinghast*, 517 A.2d 246, 248 (R.I. 1986)
- *Clements v. Tashjoin*, 168 A.2d 472, 472, 474 (R.I. 1961)
- *Sitko v. Jastrzebski*, 27 A.2d 178, 179 (R.I. 1942)
- *State v. Florez*, 138 A.3d 789, 798 n.10 (R.I. 2016)
- *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990)
- *Decathlon Investments v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021)
- *Federal National Mortgage Association v. Malinou*, 101 A.3d 860, 865 (R.I. 2014)
- *Banks v. Bowen's Landing Corp.*, 522 A.2d 1222, 1225 (R.I. 1987)
- *Flynn v. Nickerson Community Center*, 177 A.3d 468, 476 (R.I. 2018)
- *Phelps v. Hebert*, 93 A.3d 942, 946 (R.I. 2014)