

COURT OF APPEALS OF GEORGIA

Town of Fort Oglethorpe v. Phillips

121 Ga. App. 97 (Ga. Ct. App. 1970) · Decided February 4, 1970

SUMMARY

The Georgia Court of Appeals affirmed the denial of the Town of Fort Oglethorpe's motion for summary judgment in a nuisance action arising from a defective traffic signal that allegedly displayed green lights in opposing directions. The court held that factual issues remained regarding whether responsible town officials had actual or constructive knowledge of the defect in time to remedy it.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Jordan, Presiding Judge; Hall, J.; Whitman, J.
JURISDICTION	Georgia
DECIDED	February 4, 1970
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Town of Fort Oglethorpe appealed from the trial court's refusal to grant the Town's motion for summary judgment in a nuisance action involving an allegedly defective traffic signal.
STANDARD OF REVIEW	Whether the evidence disclosed a genuine issue of material fact precluding summary judgment.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Town of Fort Oglethorpe v. Phillips

TOPICS

- nuisance
- municipal liability
- summary judgment
- civil procedure

PRACTICE AREAS

- Torts
- Municipal law
- Civil procedure

QUESTIONS PRESENTED

- Whether the Town was entitled to summary judgment when its affidavits denied actual knowledge of the defective traffic signal but the pleadings and counter-affidavits supported an inference that responsible

officials should have known of the defect in time to act.

HOLDINGS

1. Summary judgment was properly denied because the evidence created a genuine issue of fact concerning whether responsible Town officials had actual or constructive knowledge of the defective traffic signal in sufficient time to remedy it.

KEY QUOTATIONS

“The vital question of knowledge, either actual or constructive, being in issue, the trial court properly refused to grant summary judgment in favor of the town.” (98)

FACTUAL BACKGROUND

A traffic signal at an intersection allegedly flashed green simultaneously in opposing directions, creating a dangerous condition. The Town allegedly knew or should have known of the defect for a sufficient period before the collision to remedy it. Affidavits from residents and former Town employees indicated that police officers had directed traffic at the intersection and that Town officials or police personnel had been informed of the malfunction shortly before the collision.

PROCEDURAL HISTORY

Earlier appellate litigation held that the pleadings were sufficient to support a nuisance claim against the Town based on injuries allegedly caused by a traffic signal that flashed green in opposing directions. The Town then moved for summary judgment, submitting affidavits denying actual knowledge of the defect. The plaintiff submitted counter-affidavits supporting an inference that responsible Town officials knew or should have known of the defect. The Court of Appeals affirmed the trial court's refusal to grant summary judgment.

DISPOSITION

affirmed

CASES CITED

- Phillips v. Town of Fort Oglethorpe, 118 Ga. App. 62, 162 S.E.2d 771
- Phillips v. Town of Fort Oglethorpe, 224 Ga. 834, 165 S.E.2d 141
- Phillips v. Town of Fort Oglethorpe, 119 Ga. App. 59, 166 S.E.2d 227

OPINION

JORDAN, J.

Jordan, Presiding Judge. Previous litigation in the appellate courts established the sufficiency of the pleadings in this case to support a claim against the Town of Fort Oglethorpe, on the theory of nuisance for injuries allegedly caused by a defective traffic light installation which flashed green

simultaneously in opposing directions, which the town allegedly knew about for two weeks and did not remedy.

See *Phillips v. Town of Fort Oglethorpe*, 118 Ga. App. 62 (162 SE2d 771); s. c. 224 Ga. 834 (165 SE2d 141); s. c. 119 Ga. App. 59 (166 SE2d 227). Thereafter, on motion for summary judgment the town filed affidavits of the entire board of aldermen, the mayor, and the chief of police, showing that they had no knowledge that the signal lights would flash green in opposite directions and no knowledge of any collisions at the intersection for a period of more than two weeks prior to the collision on which the present action is based.

In rebuttal the plaintiff filed his affidavit stating that he “and most everyone who lived at Fort Oglethorpe knew that the lights at that intersection did not work correctly,” that he had seen police officers directing traffic at the intersection when the lights were out of working order.

The affidavit of a former police officer reveals that one week before the collision the chief of police detailed him to go to the intersection to direct traffic, causing him to “assume” that the chief of police “knew that the traffic light was not functioning properly,” and that he spent an hour and a half directing traffic at the intersection during rush hours.

The affidavit of another former town employee discloses that two days before the collision he discussed the defective condition with the vice mayor, and that following his conversation he informed the dispatcher at the police department by radio of the condition.

The present appeal is from the order of the trial judge refusing to sustain the town’s motion for summary judgment. Held: The affidavits on behalf of the town, although purportedly negating actual knowledge, leave open the possibility under the pleadings that the the responsible town officials should have known of the defect in time to act, and the existence of such an issue of fact is additionally bolstered by the counter-⁹⁸affidavits disclosing circumstances which would warrant the inference that the responsible town officials should have known of the defect in sufficient time to act.

The vital question of knowledge, either actual or constructive, being in issue, the trial court properly refused to grant summary judgment in favor of the town. Submitted September 8, 1969 Decided February 4, 1970. John E. Wiggins, for appellant. Frank M. Gleason, for appellee. Judgment affirmed. Hall and Whitman, JJ., concur.