

## OHIO COURT OF APPEALS

### Carswell v. Toledo Edison Co.

53 Ohio App. 3d 82 (Ohio Ct. App. 1988) · Decided September 23, 1988

#### SUMMARY

The Ohio Court of Appeals affirmed summary judgment for Toledo Edison in a personal-injury action brought by a child who climbed an electrical transmission tower on private property and contacted an energized line. The court held that the child was a trespasser, the public-place/dangerous-instrumentality exception did not apply, and Toledo Edison therefore owed no ordinary duty of care. The court also found no evidence of willful or wanton misconduct.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                             |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Ohio Court of Appeals                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Per Curiam; Connors; Handwork; Glasser                                                                                                                                                                                                                                                                                      |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | September 23, 1988                                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Plaintiffs appealed from summary judgments entered for Toledo Edison on negligence, gross negligence, and willful-and-wanton-misconduct claims after the trial court dismissed the attractive-<br>nuisance claim.                                                                                                           |
| STANDARD OF REVIEW    | Summary judgment is reviewed by examining the record in the light most favorable to the nonmoving party and determining whether Civ. R. 56(C) requirements are satisfied: no genuine issue of material fact, entitlement to judgment as a matter of law, and only one reasonable conclusion adverse to the nonmoving party. |
| PRECEDENTIAL VALUE    | Published Ohio Court of Appeals opinion                                                                                                                                                                                                                                                                                     |
| PARTIES               | Johnny Carswell, Carswell's parents v. Toledo Edison Company                                                                                                                                                                                                                                                                |

#### TOPICS

premises liability

negligence

summary judgment

standard of review

appellate procedure

#### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the trial court properly granted summary judgment on the negligence claim by determining that Carswell was a trespasser to whom Toledo Edison owed no duty of ordinary care.
2. Whether the Ohio Court of Appeals should abolish the invitee-licensee-trespasser distinctions and adopt a uniform standard of care.
3. Whether the court should adopt the attractive-nuisance doctrine stated in Restatement (Second) of Torts § 339.
4. Whether the public-place and dangerous-instrumentality exception imposed a duty of ordinary care on Toledo Edison.
5. Whether reasonable minds could differ on whether Toledo Edison's conduct was willful or wanton.

## HOLDINGS

1. Summary judgment is proper when, viewing the record most favorably to the nonmoving party, there is no genuine issue of material fact, the movant is entitled to judgment as a matter of law, and reasonable minds can reach only a conclusion adverse to the nonmoving party.
2. A landowner or occupier generally owes an undiscovered trespasser only the duty to refrain from willful or wanton conduct.
3. The public-place exception did not impose a duty of ordinary care because the transmission tower was nearly 40 feet from Seaman Street, the energized wire was 60 feet above the ground, and the record did not show that the danger was susceptible to contact by inadvertent conduct or that Toledo Edison knew or should have known of persons on the property.
4. The intermediate appellate court would not abolish Ohio's distinctions among invitees, licensees, and trespassers because Ohio Supreme Court precedent continued to recognize those distinctions.
5. Toledo Edison was entitled to summary judgment on the willful-and-wanton-misconduct claim because the record showed no intent, purpose, or design to injure and no failure to exercise any care under circumstances involving a great probability of harm.

## KEY QUOTATIONS

*“A trespasser is one who, without express or implied authorization, invitation or inducement, enters private premises purely for his own purposes or convenience.”* (85)

*“There was no evidence of any intention, purpose or design to injure appellant by appellee, and so, there was no willful conduct on the part of appellee.”* (86)

## FACTUAL BACKGROUND

Ten-year-old Johnny Carswell and several friends took a shortcut through a privately owned vacant field near Seaman Street. Approximately 38.7 feet from the street stood a 113-foot steel electrical transmission tower

maintained by Toledo Edison, with an energized line approximately 60 feet above the ground. Carswell climbed the tower and suffered permanent, disfiguring injuries when he contacted the live line. The record contained no evidence that Toledo Edison knew or should have known that people or children were present on the easement property or that the tower had been improperly constructed, maintained, or inspected.

## PROCEDURAL HISTORY

Johnny Carswell was injured after climbing an electrical transmission tower on Toledo Edison property and contacting an energized transmission line. The Lucas County Court of Common Pleas dismissed the attractive- nuisance theory, entered partial summary judgment for Toledo Edison on negligence, and granted summary judgment on the gross-negligence and willful-and-wanton-misconduct theories. The trial court affirmed the negligence ruling on reconsideration in light of intervening precedent. The Ohio Court of Appeals affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Williams v. First United Church of Christ, 37 Ohio St. 2d 150, 309 N.E. 2d 924 (1974)
- Engel v. Corrigan, 12 Ohio App. 3d 34, 465 N.E. 2d 932 (1983)
- Harless v. Willis Day Warehousing Co., 54 Ohio St. 2d 64, 375 N.E. 2d 46 (1978)
- Preston v. Baltimore & Ohio R.R. Co., 49 Ohio App. 3d 70, 550 N.E. 2d 191 (1988)
- Shuman v. Schick, 95 Ohio App. 413, 120 N.E. 2d 330 (1953)
- Thompson v. Moore, 72 Ohio App. 539, 53 N.E. 2d 666 (1943)
- McKinney v. Hartz & Restle Realtors, Inc., 31 Ohio St. 3d 244, 510 N.E. 2d 386 (1987)
- Elliott v. Nagy, 22 Ohio St. 3d 58, 488 N.E. 2d 853 (1986)
- Brooks v. Norfolk & Western Ry. Co., 45 Ohio St. 2d 34, 340 N.E. 2d 392 (1976)
- Johnson v. New London, 36 Ohio St. 3d 60, 521 N.E. 2d 793 (1988)
- Brady v. Consolidated Rail Corp., 35 Ohio St. 3d 161, 519 N.E. 2d 387 (1988)
- Wills v. Frank Hoover Supply, 26 Ohio St. 3d 186, 497 N.E. 2d 1118 (1986)
- Coy v. Columbus, Delaware & Marion Electric Co., 125 Ohio St. 283, 181 N.E. 131 (1932)
- Ziehm v. Vale, 98 Ohio St. 306, 120 N.E. 702 (1918)
- Greene v. Lake Shore Electric Ry. Co., 10 Ohio Law Abs. 7 (Ohio Ct. App. 1930)
- Ohio Public Service Co. v. Alexander, 6 Ohio Law Abs. 337 (Ohio Ct. App. 1928)
- Klingensmith v. Scioto Valley Traction Co., 18 Ohio App. 290 (Ohio Ct. App. 1924)
- Soles v. Ohio Edison Co., 144 Ohio St. 373, 59 N.E. 2d 138 (1945)
- Denzer v. Terpstra, 129 Ohio St. 1, 193 N.E. 647 (1934)
- Reserve Trucking Co. v. Fairchild, 128 Ohio St. 519, 191 N.E. 745 (1934)
- Motorists Mutual Insurance Co. v. Bill, 56 Ohio St. 2d 258, 383 N.E. 2d 880 (1978)
- Hawkins v. Ivy, 50 Ohio St. 2d 114, 363 N.E. 2d 367 (1977)

- Dolata v. Ohio Edison Co., 2 Ohio App. 3d 293, 441 N.E. 2d 837 (1981)
- Hetrick v. Marion-Reserve Power Co., 141 Ohio St. 347, 48 N.E. 2d 103 (1943)
- Hannan v. Ehrlich, 102 Ohio St. 176, 131 N.E. 504 (1921)

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