

SUPREME COURT OF GEORGIA

Town of Fort Oglethorpe v. Phillips, 224 Ga. 834

165 S.E.2d 141 (1968) · No. 24819 · Decided December 5, 1968

SUMMARY

The Supreme Court of Georgia held that the operation and maintenance of a traffic light is generally a governmental function for which a municipality is not liable in negligence, and that an improperly operating traffic light is not a physical street defect under Code § 69-303. However, the court affirmed because the petition alleged facts sufficient to state a nuisance claim based on the municipality’s knowing maintenance of a dangerous traffic-light condition.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Almand, Presiding Justice
JURISDICTION	Georgia
DECIDED	December 5, 1968
DOCKET	24819
DISPOSITION	affirmed
PROCEDURAL POSTURE	The municipality sought certiorari from the Court of Appeals' reversal of the trial court's order sustaining its general demurrer and dismissing the personal-injury petition against the Town.
STANDARD OF REVIEW	Review of the sufficiency of the petition on general demurrer; the Supreme Court was limited to the allegations of the petition.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Town of Fort Oglethorpe v. Alvin Doyle Phillips, Jr., by his father and next friend

TOPICS

- municipal liability
- nuisance
- municipal law
- writ of certiorari
- appellate procedure

PRACTICE AREAS

- municipal law
- municipal liability
- torts
- remedies
- appellate procedure

QUESTIONS PRESENTED

1. Whether the maintenance and operation of a municipal traffic light is a governmental or ministerial function for purposes of municipal tort liability.
2. Whether an improperly operating traffic light constitutes a physical defect or obstruction in a street under Code § 69-303.
3. Whether the petition's allegations were sufficient to state a nuisance claim against the municipality despite governmental-function immunity from ordinary negligence claims.

HOLDINGS

1. The maintenance and operation of a traffic-light system is a governmental function, and a municipality is not liable for negligent performance of that function.
2. The improper operation of a municipal traffic light is not a physical defect or obstruction in a street within the meaning of Code § 69-303 and therefore does not convert the traffic-regulation function into a ministerial street-maintenance function.
3. The petition stated a cause of action for the Town's operation and maintenance of a nuisance, notwithstanding that the alleged conduct occurred in the exercise of a governmental function.

KEY QUOTATIONS

“Thus, the improper operation of the traffic light in the instant case is not such a physical obstruction or defect in the street as would change this traffic regulating function from a governmental function to a ministerial function so as to permit an injured party to recover for the municipality's negligent operation of said traffic light.” (837)

“A municipality like any other individual or private corporation may be liable for damages it causes to a third party from the operation or maintenance of a nuisance, irrespective of whether it is exercising a governmental or a ministerial function.” (838)

“Certainly, the petition states facts sufficient to show the active operation and maintenance of a dangerous condition and knowingly allowing such condition to continue to the injury of the plaintiff.” (838)

FACTUAL BACKGROUND

A traffic signal at a Fort Oglethorpe intersection allegedly flashed red or green on all four sides simultaneously. Municipal officials allegedly knew of the defect for more than two weeks, knew that numerous collisions had resulted, and failed to repair the signal. On the day of Phillips's injury, six collisions allegedly occurred at the intersection, including the collision between Phillips's motorbike and an automobile.

PROCEDURAL HISTORY

Phillips sued the Hamiltons and the Town of Fort Oglethorpe for injuries resulting from an intersection collision allegedly caused in part by a defective traffic signal. The trial court sustained the Town's general demurrer and dismissed the petition as to the Town. The Court of Appeals reversed, and the Supreme Court of Georgia granted

the Town's application for certiorari and affirmed the Court of Appeals' judgment on the alternative ground that the petition stated a nuisance claim.

DISPOSITION

affirmed

CASES CITED

- Phillips v. Town of Fort Oglethorpe, 118 Ga. App. 62, 162 S.E.2d 771 (1968)
- Arthur v. City of Albany, 98 Ga. App. 746, 747, 106 S.E.2d 347 (1958)
- Stanley v. City of Macon, 95 Ga. App. 108 (1), 97 S.E.2d 330 (1957)
- City of Rome v. Potts, 45 Ga. App. 406, 410, 165 S.E. 131 (1932)
- Dorminey v. City of Montgomery, 232 Ala. 47, 166 So. 689
- Avey v. City of West Palm Beach, 152 Fla. 717, 12 So. 2d 881
- Auslander v. City of St. Louis, 332 Mo. 145, 56 S.W.2d 778
- Powell v. City of Nashville, 167 Tenn. 334, 69 S.E.2d 894
- Sandmann v. Sheehan, 279 Ky. 614, 131 S.E.2d 484
- Martin v. City of Canton, 41 Ohio App. 420, 180 N.E. 78
- Parsons v. City of New York, 273 N.Y. 547, 7 N.E.2d 685
- Vickers v. City of Camden, 122 N.J.L. 14, 3 A.2d 613
- Suslander v. City of St. Louis, 332 Mo. 145, 154, 56 S.W.2d 778
- Hanson v. Berry, 54 N.D. 487, 209 N.W. 1002
- Ingram v. City of Acworth, 90 Ga. App. 719, 720, 84 S.E.2d 99 (1954)
- Archer v. City of Austell, 68 Ga. App. 493, 497, 23 S.E.2d 512 (1943)
- Delta Air Corp. v. Kersey, 193 Ga. 862, 870, 20 S.E.2d 245, 140 A.L.R. 1352 (1942)
- South-land Coffee Co. v. City of Macon, 60 Ga. App. 253, 257, 3 S.E.2d 739 (1939)
- City of Atlanta v. Due, 42 Ga. App. 797, 803, 157 S.E. 256 (1931)

OPINION

ALMAND, J.

224 Ga. 834 (1968) 165 S.E.2d 141 TOWN OF FORT OGLETHORPE v. PHILLIPS, by Next Friend. 24819. Supreme Court of Georgia. Argued November 12, 1968. Decided December 5, 1968. John E. Wiggins, for appellant. Frank Gleason, Broadus McAfee, for appellee. Henry L. Bowden, James T. McIntyre, Jr., Martin McFarland, for party at interest not party to record. ALMAND, Presiding Justice.

Alvin Doyle Phillips, Jr., a minor, by his father and next friend brought an action seeking to recover damages for personal injuries against Earl and Sylvia Hamilton, owner and driver

respectively of an automobile with which plaintiff had an intersection collision while riding on a motorbike, and the Town of Fort Oglethorpe wherein the collision occurred. Plaintiff in his petition alleged that: The Town of Fort Oglethorpe maintains and operates a traffic control light at the intersection where the collision took place.

On the date of the collision and for two weeks beforehand, the Mayor, Chief of Police and Aldermen of Fort Oglethorpe had knowledge that this traffic light was not working correctly and failed to correct it. This traffic light was defective in that it would flash either red or green on all four sides of the intersection simultaneously. Numerous accidents resulted from the defective condition of the traffic light, and on the day the plaintiff was injured there were six collisions at this crowded intersection because the defective traffic light flashed green in all directions causing approaching vehicles to collide.

The mayor and chief of police knew of these six collisions that took place on the same day the plaintiff was injured and did not repair the defective traffic light. Through the negligent acts of the Town of Fort Oglethorpe a traffic hazard was created obstructing the intersection and producing a condition injurious to the plaintiff.

The Town of Fort Oglethorpe's negligent and careless operation *835 of the traffic light at the intersection in question constituted a nuisance in that it "interfered with the orderly and safe operation of vehicles and caused an obstruction of the street" thereby rendering the street not reasonably safe for use. This hazardous condition created by the Town of Fort Oglethorpe's negligence and the negligence of defendant Sylvia Hamilton concurred in causing the plaintiff's injury.

The Town of Fort Oglethorpe filed a general demurrer to the plaintiff's petition. After hearing argument of counsel of the parties, the trial court sustained the municipality's demurrer and dismissed the petition as to the Town of Fort Oglethorpe. Plaintiff appealed to the Court of Appeals which reversed the trial court by holding (with four Judges dissenting) that: "An action in tort will lie against a municipality which, with knowledge of the facts, maintains a defective traffic light at an intersection which periodically shows the green or 'go' signal in all four directions simultaneously, resulting in injury to the plaintiff by collision with an automobile approaching at right angles, both entering the intersection as a result of the faulty signal, since its maintenance in this condition renders the street not reasonably safe for use."

(Emphasis supplied.) *Phillips v. Town of Fort Oglethorpe*, 118 Ga. App. 62 (162 SE2d 771). The Town of Fort Oglethorpe made an application to this court for the writ of certiorari which was granted. The Court of Appeals regarded the main issue in the case as being "whether the maintenance of a defective traffic light by the city, with knowledge of the defect, in such manner as to cause automobiles relying upon it to collide with each other constitutes negligence in the exercise of a governmental or ministerial function."

Certainly, we view this issue as being one of the decisive questions in this case; however, we would arrive at a different conclusion from that drawn by the Court of Appeals. The Court of Appeals took the position that the maintenance of a traffic light is a ministerial function and that the failure to properly maintain a traffic light creates a defect or obstruction in the street in violation of Code § 69-303.

With these conclusions we cannot agree. The general rule is that in the maintenance and operation of *836 a traffic light system a city functions in a governmental capacity, thereby relieving the city of liability for failure to keep traffic lights functioning properly. 18 McQuillin, Municipal Corporations (3rd Ed. revised) p. 234, § 53.42. See 63 CJS 91, Municipal Corporations, § 782.

See also *Dorminey v. City of Montgomery*, 232 Ala. 47 (166 S 689); *Avey v. City of West Palm Beach*, 152 Fla. 717 (12 S2d 881); *Auslander v. City of St. Louis*, 332 Mo. 145 (56 S.W.2d 778); *Powell v. City of Nashville*, 167 Tenn. 334 (69 SE2d 894); *Sandmann v. Sheehan*, 279 Ky. 614 (131 SE2d 484); *Martin v. City of Canton*, 41 Ohio App. 420 (180 N.E. 78); *Parsons v. City of New York*, 273 N.Y.

547 (7 NE2d 685) and *Vickers v. City of Camden*, 122 N. J. L. 14 (3 A2d 613). Furthermore, in *Arthur v. City of Albany*, 98 Ga. App. 746, 747 (106 SE2d 347), it was expressly held: "The operation and maintenance of traffic lights and other traffic control devices is a governmental function conducted on behalf of the public safety and for the negligent performance of which municipal corporations are not liable."

Very similar language appears in *Stanley v. City of Macon*, 95 Ga. App. 108 (1) (97 SE2d 330). See *City of Rome v. Potts*, 45 Ga. App. 406, 410 (165 S.E. 131). We are of the opinion that the maintenance and operation of the traffic light by the Town of Fort Oglethorpe is a governmental function and the municipality is not liable for negligent performance. Secondly, we are of the opinion that the improper operation of a traffic light by a municipality is not such a defect or obstruction of the streets as to bring this function within the scope of Code § 69-303, which would result in this function becoming ministerial.

In *Arthur v. City of Albany*, 98 Ga. App. 746, 747, *supra*, it was held that the municipality's maintenance of traffic control devices is "not related to the maintenance of the streets as such, and liability of a municipality for negligent failure to maintain a stop sign after it is once erected cannot be predicated on the theory that it is a part of street maintenance."

Obstructions or defects in the streets within the meaning of Code § 69-303 are physical obstructions or defects in the streets. In *Suslander v. City of St. Louis*, 332 Mo. 145, 154, *supra*, this reasoning is well expressed when the court said: "There is a *837 difference, however, between the physical condition of a street and its use by the public.

The keeping of a street in a condition reasonably safe for travel thereon has reference to its physical condition, and is a different matter than the regulation of traffic on such street. The one relates to the corporate or proprietary powers of the city, while the other relates to its governmental or police powers. This distinction is pointed out in 43 CJ 996, as follows: "The manner in which a highway of a city is used is a different thing from its quality and condition as a street.

The construction and maintenance of a street in a safe condition for travel is a corporate duty, and for a breach of such duty an action will lie; but making and enforcing ordinances regulating the use of streets brings into exercise governmental, and not corporate, powers, and the authorities are well agreed that for failure to exercise legislative, judicial or executive powers of government, there is not liability." See *Dorminey v. City of Montgomery*, 232 Ala.

47, *supra*; *Hanson v. Berry*, 54 N. D. 487 (209 N.W. 1002) and *Martin v. City of Canton*, 41 Ohio App. 420, *supra*. Thus, the improper operation of the traffic light in the instant case is not such a physical obstruction or defect in the street as would change this traffic regulating function from a governmental function to a ministerial function so as to permit an injured party to recover for the municipality's negligent operation of said traffic light.

While we disagree that the maintenance and operation of a traffic light is a ministerial function and that the municipality's failure to properly maintain such traffic light constitutes an obstruction or defect in the street within the context of Code § 69-303, we do agree with the judgment of the Court of Appeals, but of other reasons.

We are limited in our ruling in the instant case exclusively to the allegations of the petition, and under these particular allegations the plaintiff sets forth facts sufficient to state a cause of action based on nuisance as against the municipality's general demurrer. A municipality like any other individual or private corporation may be liable for damages it causes to a third party from *838 the operation or maintenance of a nuisance, irrespective of whether it is exercising a governmental or a ministerial function.

Ingram v. City of Acworth, 90 Ga. App. 719, 720 (84 SE2d 99); *Archer v. City of Austell*, 68 Ga. App. 493, 497 (23 SE2d 512). While it is true that a municipal corporation is not liable for its acts of negligence in discharging a governmental function, yet a municipal corporation cannot under the guise of performing a governmental function create a nuisance dangerous to life or health.

Delta Air Corp. v. Kersey, 193 Ga. 862, 870 (20 SE2d 245, 140 A.L.R. 1352). Anything that works hurt, inconvenience or damage to another is a nuisance. Code § 72-101. An action may be brought against a municipality for the creation or maintenance of a nuisance where the municipality is negligent in carrying out a lawful act which it was authorized to do. *South-land Coffee Co. v. City of Macon*, 60 Ga. App.

253, 257 (3 SE2d 739); *City of Atlanta v. Due*, 42 Ga. App. 797, 803 (157 S.E. 256). The allegations of the petition take the instant case beyond mere negligence and into a situation which constitutes a nuisance. The allegations that the Mayor, Chief of Police and Aldermen of Fort Oglethorpe had knowledge for more than two weeks of the defective condition of the traffic light at the intersection in question causing numerous collisions and these officials did not repair this defect but continued to allow it to operate defectively; and further, that the mayor and chief of police knew that six collisions took place at the intersection on the day plaintiff was injured and did nothing to correct the situation, set forth the operation and maintenance of a defective condition that could work damage to anyone who came in proximity to it.

Certainly, the petition states facts sufficient to show the active operation and maintenance of a dangerous condition and knowingly allowing such condition to continue to the injury of the plaintiff. Accordingly, the particular allegations of the instant petition set forth a cause of action for the operation and maintenance of a nuisance. Judgment affirmed.

All the Justices concur.