

SUPREME COURT OF OHIO

Link v. FirstEnergy Corp.

147 Ohio St. 3d 285, 2016-Ohio-5083 (Ohio 2016) · No. 2015-0132 · Decided July 26, 2016

SUMMARY

The Supreme Court of Ohio held that utility companies were not required to obtain permission from the township or county engineer to leave a utility pole in its existing location after a road-widening project. The court further held that the evidence was legally insufficient to establish that the pole interfered with the usual and ordinary course of travel. It reversed the Eighth District Court of Appeals and remanded for entry of judgment for the utility companies.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	French, J.; O'Connor, C.J.; Lanzinger, J.; Kennedy, J.; O'Donnell, J.; O'Neill, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	July 26, 2016
DOCKET	2015-0132
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed from the Eighth District Court of Appeals' judgment affirming a jury award on qualified-nuisance and loss-of-consortium claims and ordering a new trial on punitive damages. The Supreme Court accepted review of whether statutory permission under R.C. 4931.03 satisfied the permission requirement identified in Turner v. Ohio Bell Tel. Co. and whether the defendants were entitled to judgment notwithstanding the verdict.
STANDARD OF REVIEW	De novo review of the denial of judgment notwithstanding the verdict, construing the evidence most strongly in favor of the appellees to determine whether it was legally sufficient to sustain the jury's verdict. The denial of summary judgment was treated as moot after the subsequent jury trial.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; binding precedent in Ohio.
PARTIES	FirstEnergy Corporation, Cleveland Electric Illuminating Company, FirstEnergy Service Company v. Douglas V. Link, Diane Link

TOPICS

public utilities

municipal law

statutory interpretation

standard of review

appellate procedure

PRACTICE AREAS

torts

municipal law

public utilities

appellate procedure

QUESTIONS PRESENTED

1. Whether R.C. 4931.03 required CEI and FirstEnergy to obtain permission or a permit from the township or county engineer to leave an existing utility pole in its location after a road-widening project.
2. Whether the evidence was legally sufficient to establish that the utility pole interfered with the usual and ordinary course of travel under the rule announced in *Turner v. Ohio Bell Tel. Co.*
3. Whether CEI and FirstEnergy could be held liable under any theory asserted by the Links based on the pole's location.

HOLDINGS

1. R.C. 4931.03 did not require CEI or FirstEnergy to obtain permission or a permit from the township board of trustees or county engineer to leave the utility pole in its existing location. Absent a resolution or other affirmative legal action by the township seeking to revoke permission, no applicable Ohio law required relocation.
2. The evidence was legally insufficient to establish that the pole interfered with the usual and ordinary course of travel on Savage Road. Because the pole was outside the improved portion of the roadway and there was no evidence that a motorist using the improved roadway would ordinarily encounter it, CEI and FirstEnergy could not be held liable under *Turner*.

KEY QUOTATIONS

“When a vehicle collides with a utility pole located off the improved portion of the roadway but within the right-of-way, a public utility is not liable, as a matter of law, if the utility has obtained any necessary permission to install the pole and the pole does not interfere with the usual and ordinary course of travel.” (¶ 24)

“Noncompliance with the manual’s guidelines, without more, does not establish an unsafe condition.” (¶ 37)

“As a matter of law, CEI and FirstEnergy cannot be held liable, under any theory of liability asserted by the Links.” (¶ 40)

FACTUAL BACKGROUND

Bainbridge Township widened Savage Road, and CEI initially planned to relocate numerous utility poles, including the pole involved in Douglas Link's accident. CEI later decided not to relocate eight poles, leaving the accident pole approximately 6 feet, 3.6 inches from the pavement edge and outside the improved roadway. After a deer struck Link while he was riding his motorcycle, Link left the roadway and collided with the pole,

suffering extensive injuries. The township and county engineer had expressed safety concerns but did not undertake formal proceedings ordering relocation before the accident.

PROCEDURAL HISTORY

The Links sued CEI, FirstEnergy Service Company, and FirstEnergy Corporation after Douglas Link's motorcycle struck a utility pole following a deer-related accident. The trial court denied summary judgment, directed verdicts for FirstEnergy Corporation and on several claims, and entered judgment on jury verdicts for the Links on qualified nuisance and loss of consortium. The Eighth District affirmed in relevant part and ordered a new trial on punitive damages. The Supreme Court of Ohio reversed and remanded for entry of judgment for the appellants.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to enter judgment for CEI and FirstEnergy.

CASES CITED

- Turner v. Ohio Bell Tel. Co., 118 Ohio St. 3d 215, 2008-Ohio-2010, 887 N.E.2d 1158
- Environmental Network Corp. v. Goodman Weiss Miller, L.L.P., 119 Ohio St. 3d 209, 2008-Ohio-3833, 893 N.E.2d 173
- Continental Ins. Co. v. Whittington, 71 Ohio St. 3d 150, 642 N.E.2d 615 (1994)
- Toledo Edison Co. v. Bd. of Defiance Cty. Commrs., 2013-Ohio-5374, 4 N.E.3d 458 (3d Dist.)
- Mfr.'s Natl. Bank of Detroit v. Erie Cty. Rd. Comm., 63 Ohio St. 3d 318, 587 N.E.2d 819 (1992)
- Steele v. Ohio Dept. of Transp., 162 Ohio App. 3d 30, 2005-Ohio-3276, 832 N.E.2d 764
- Floering v. Roller, 2003-Ohio-5679
- Swaisgood v. Puder, 2007-Ohio-307
- Elster v. Springfield, 49 Ohio St. 82, 30 N.E. 274 (1892)
- Bidar v. Cleveland Elec. Illum. Co., 2012-Ohio-3686