

## SUPREME COURT OF CONNECTICUT

# Madeline McDermott, Administratrix (Estate of William McDermott), et al. v. State of Connecticut

McDermott v. State · No. SC 19221 · Decided April 28, 2015

### SUMMARY

The Connecticut Supreme Court reviewed a wrongful death and loss of consortium action arising from a tree-removal operation in which a bystander was fatally injured by flying debris. The court held that the trial court applied an improper standard in determining that the state had assumed a greater duty of care, but rejected the Appellate Court's direction to enter judgment for the state. The case was remanded for a new trial under the general negligence standard, with proximate cause left for the trier of fact.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Connecticut                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Eveleigh, J.; Rogers, C. J.; Palmer, J.; Zarella, J.; Espinosa, J.                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | Connecticut                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | April 28, 2015                                                                                                                                                                                                                                                                                                                                                      |
| DOCKET                | SC 19221                                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | The plaintiff appealed to the Connecticut Supreme Court from the Appellate Court's reversal of a trial court judgment imposing liability on the State for wrongful death and loss of consortium. The Supreme Court affirmed the reversal of the trial judgment, reversed the Appellate Court's direction to render judgment for the State, and ordered a new trial. |
| STANDARD OF REVIEW    | Questions concerning the existence and scope of a duty are reviewed de novo or plenary. Proximate cause is generally a question for the trier of fact and becomes a question of law only when a fair and reasonable person could reach only one conclusion.                                                                                                         |
| PRECEDENTIAL VALUE    | published precedential Connecticut Supreme Court opinion                                                                                                                                                                                                                                                                                                            |
| PARTIES               | Madeline McDermott, individually and as administratrix of the estate of William McDermott, Plaintiffs v. State of Connecticut                                                                                                                                                                                                                                       |

## TOPICS

negligence

duty of care

standard of care

proximate cause

appellate procedure

## PRACTICE AREAS

torts

negligence

wrongful death

appellate procedure

remedies

## QUESTIONS PRESENTED

1. Whether the trial court improperly applied a voluntary-undertaking theory under § 323 of the Restatement (Second) of Torts without making findings that the plaintiff relied on the undertaking or that the undertaking increased the risk of harm.
2. Whether an industry safety standard conclusively established the scope of the State's duty to the pedestrian.
3. Whether the Appellate Court properly determined as a matter of law that the State's conduct was not the proximate cause of the decedent's death.
4. Whether reversal based on application of the wrong legal standard required judgment for the State or a new trial.

## HOLDINGS

1. The trial court improperly applied § 323 of the Restatement (Second) of Torts because it did not find that the decedent relied on the cone placement or that the placement increased the risk of harm. The record therefore did not support a conclusion that the State voluntarily assumed a greater duty than otherwise legally required.
2. Industry custom or safety standards are admissible evidence of the standard of care but are not conclusive or binding on the trier of fact. The applicable standard is the general negligence standard of duty, breach, causation, and actual injury.
3. The issue of proximate cause could not be resolved as a matter of law on the existing record. Whether failing to remove the decedent from the coned work zone was negligent and proximately caused the injury were factual questions for the trier of fact.
4. Because the trial court applied the wrong legal standard, the case had to be remanded for a new trial rather than resolved in the State's favor.

## KEY QUOTATIONS

*"The trier of fact is not bound by the industry standard, but rather should consider it in light of the totality of the evidence presented in the case."* (at 609)

*"Therefore, we conclude that the standard to be used is the general negligence standard of duty, breach, causation and actual injury."* (at 610)

*"Whether the failure of the defendant's employees to remove the decedent from the work zone was negligent, and whether that negligence was the proximate cause of the injury, were questions of fact for the trier."* (at

## FACTUAL BACKGROUND

State Department of Transportation employees removed a fifty-five-foot sugar maple tree beside a street and pedestrian sidewalk. The crew marked the work area with cones approximately eighty-five feet south and one hundred feet north of the tree, but did not move the cones as the tree was cut into segments. A pedestrian stood between crew members and approximately fifty-five feet from the tree while a trunk segment was removed; the segment struck a previously removed limb, propelling the limb into the pedestrian and causing fatal injuries.

## PROCEDURAL HISTORY

After receiving permission from the Claims Commissioner to sue the State, the plaintiff tried wrongful-death and loss-of-consortium claims. The trial court found the State liable and awarded damages after a bifurcated trial. The Appellate Court reversed, concluding that the trial court improperly found an assumed duty beyond industry standards and that the State's conduct was not the proximate cause of death. The Supreme Court agreed that the trial court applied the wrong legal standard but held that the proper remedy was a new trial rather than judgment for the State.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The Supreme Court affirmed the Appellate Court's reversal of the trial court judgment, reversed the Appellate Court's direction to render judgment for the State, and directed the Appellate Court to remand the case to the trial court for a new trial applying the general negligence standard and evaluating duty, breach, causation, and actual injury. The trier of fact must treat industry standards as evidence rather than as conclusive.

## CASES CITED

- McDermott v. State, 145 Conn. App. 75, 73 A.3d 886 (2013)
- Lodge v. Arett Sales Corp., 246 Conn. 563, 573, 717 A.2d 215 (1998)
- Mirjavadi v. Vakilzadeh, 310 Conn. 176, 191-92, 194-95, 74 A.3d 1278 (2013)
- LePage v. Horne, 262 Conn. 116, 123-24, 809 A.2d 505 (2002)
- Mazurek v. Great American Ins. Co., 284 Conn. 16, 29, 930 A.2d 682 (2007)
- State v. Sanseverino, 291 Conn. 574, 588-89, 969 A.2d 710 (2009)
- O'Dell v. Kozee, 307 Conn. 231, 234-35, 53 A.3d 178 (2012)
- Coburn v. Lenox Homes, Inc., 186 Conn. 370, 381, 441 A.2d 620 (1982)
- T. J. Hooper, 60 F.2d 737, 740 (2d Cir.), cert. denied sub nom. Eastern Transportation Co. v. Northern Barge Corp., 287 U.S. 662 (1932)
- Considine v. Waterbury, 279 Conn. 830, 867-68, 905 A.2d 70 (2006)
- Stewart v. Federated Dept. Stores, Inc., 234 Conn. 597, 609, 611, 662 A.2d 753 (1995)

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