

SUPREME JUDICIAL COURT OF MAINE

Robert L. Tolliver Jr., as sole guardian and conservator of Lucas E.
Tolliver v. Department of Transportation

948 A.2d 1223 (Me. 2008) · No. Cum-06-687 · Decided May 13, 2008

SUMMARY

The Maine Supreme Judicial Court held that the Maine Department of Transportation was not entitled to discretionary-function immunity for alleged negligence in implementing road-striping decisions during a highway construction project. The court also held that an expert road-construction witness lacked sufficient foundation to testify that the absence of an edge line substantially contributed to this particular accident. The judgment was vacated.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Levy, J.; Saufley, C.J.; Clifford, J.; Alexander, J.; Silver, J.; Mead, J.; Gorman, J.
JURISDICTION	Maine
DECIDED	May 13, 2008
DOCKET	Cum-06-687
DISPOSITION	vacated
PROCEDURAL POSTURE	MDOT appealed from a judgment entered after a jury found MDOT liable for negligence. Tolliver cross-appealed the trial court's reduction of the damages award to the statutory governmental-liability cap.
STANDARD OF REVIEW	Statutory interpretation and entitlement to discretionary-function immunity are reviewed de novo. The reliability of expert testimony is reviewed for clear error. A judgment as a matter of law is improper if any reasonable view of the evidence could sustain the opposing party's verdict. Preserved evidentiary error is harmless only if it is highly probable that the error did not affect the judgment.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; majority opinion precedential.
PARTIES	Maine Department of Transportation v. Robert L. Tolliver Jr., as sole guardian and conservator of Lucas E. Tolliver

TOPICS

negligence

premises liability

proximate cause

expert testimony

appellate procedure

PRACTICE AREAS

torts

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evidence

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QUESTIONS PRESENTED

1. Whether MDOT was entitled to discretionary-function immunity under the Maine Tort Claims Act for failing to timely stripe Route 302 and failing to use temporary edge-line markings.
2. Whether the trial court erred by admitting Laurent Lavigne's expert opinion that the lack of an edge line was a substantial contributing factor in the accident.
3. Whether, excluding Lavigne's causation testimony, the evidence was sufficient to support a finding that MDOT's failure to stripe the road was a proximate cause of the accident.
4. Whether the damages cap applied to MDOT's liability.

HOLDINGS

1. MDOT was not entitled to discretionary-function immunity for the day-to-day implementation of its decision to stripe Route 302. The laying out, scheduling, and painting of the edge lines were ministerial operational acts within the road-construction waiver of the Maine Tort Claims Act.
2. The trial court erred by admitting Lavigne's opinion that the lack of an edge line was a substantial contributor to this particular accident.
3. Without Lavigne's inadmissible causation opinion, the evidence was insufficient to permit a reasonable fact-finder to conclude that the lack of an edge line substantially contributed to the accident. MDOT was therefore entitled to judgment as a matter of law.

KEY QUOTATIONS

“However, once MDOT has exercised its discretion by deciding to undertake a road improvement project, section 8104-A(4) requires MDOT to complete that project in a non-negligent manner.” (948 A.2d at 1232-1233)

“Lavigne’s training and experience may have permitted him to opine that the lack of an edge line created an unsafe condition that was a possible cause of the accident, but not that it was a proximate cause of the accident.” (948 A.2d at 1235)

“However, to allow the jury to also infer actual causation from the conflicting and inconclusive evidence in this case, from expert and lay witnesses alike, would be to replace fact-finding with sheer conjecture.” (948 A.2d at 1237)

FACTUAL BACKGROUND

In the early morning, Caroline Knight struck pedestrian Lucas Tolliver on Route 302 in Casco while the road was under MDOT construction and had recently been repaved. The roadway had centerline markers but no white edge lines separating the travel lanes from the breakdown lanes. Lucas suffered severe injuries, including brain injury, and the evidence presented competing theories concerning whether he was walking in the breakdown lane or travel lane and how Knight's vehicle struck him.

PROCEDURAL HISTORY

The Superior Court denied MDOT's motions for summary judgment based on discretionary-function immunity and causation. After a six-day jury trial, the jury found MDOT, the driver, and Lucas negligent, allocated 35% of the fault to MDOT, and awarded damages subject to reduction for Lucas's comparative negligence. The Superior Court later capped MDOT's liability at \$400,000. The Supreme Judicial Court vacated the judgment and remanded for entry of judgment for MDOT.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remanded for entry of judgment in favor of MDOT.

CASES CITED

- Rodriguez v. Town of Moose River, 2007 ME 68, 922 A.2d 484
- Gove v. Carter, 2001 ME 126, 775 A.2d 368
- Norton v. Hall, 2003 ME 118, 834 A.2d 928
- Carroll v. City of Portland, 1999 ME 131, 736 A.2d 279
- Chiu v. City of Portland, 2002 ME 8, 788 A.2d 183
- York Ins. of Me., Inc. v. Superintendent of Ins., 2004 ME 45, 845 A.2d 1155
- Adriance v. Town of Standish, 687 A.2d 238 (Me. 1996)
- Dalehite v. United States, 346 U.S. 15 (1953)
- Darling v. Augusta Mental Health Inst., 535 A.2d 421 (Me. 1987)
- Roberts v. State, 1999 ME 89, 731 A.2d 855
- State v. Tibbetts, 572 A.2d 142 (Me. 1990)
- State v. Williams, 388 A.2d 500 (Me. 1978)
- Searles v. Fleetwood Homes of Pa., Inc., 2005 ME 94, 878 A.2d 509
- State v. Irving, 2003 ME 31, 818 A.2d 204
- Merriam v. Wanger, 2000 ME 159, 757 A.2d 778
- DiPietro v. Boynton, 628 A.2d 1019 (Me. 1993)
- Bennett v. Forman, 675 A.2d 104 (Me. 1996)
- Castine Energy Constr., Inc. v. T.T. Dunphy, Inc., 2004 ME 129, 861 A.2d 671

- Marcoux v. Parker Hannifin/Nichols Portland Div., 2005 ME 107, 881 A.2d 1138
- Houde v. Millett, 2001 ME 183, 787 A.2d 757

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