

COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT

John D. Lang v. Rodney Prince; Blanche Arellanes v. Alfred Prince

447 So. 2d 1112 (1st Cir. 1984) · No. Nos. 83 CA 0362, 83 CA 0363 · Decided February 28, 1984

SUMMARY

The Louisiana Court of Appeal, First Circuit, affirmed liability against South Central Bell Telephone Company and the Louisiana Department of Transportation and Development for a hazardous utility-pole location that contributed to a fatal automobile accident. The court reversed liability against Gulf States Utilities Company because it did not own or participate in relocating the pole. The court also upheld the general damages award to Blanche Arellanes but disallowed her separate claims for medical expenses and lost wages as nonrecoverable in the wrongful-death action.

CASE DETAILS

COURT	Court of Appeal of Louisiana, First Circuit
WRITING FOR THE COURT	Crain, Judge; Shortess; Lanier; Crain
JURISDICTION	Louisiana
DECIDED	February 28, 1984
DOCKET	Nos. 83 CA 0362, 83 CA 0363
DISPOSITION	other
PROCEDURAL POSTURE	Defendants Gulf States Utilities Company, South Central Bell Telephone Company, and the Louisiana Department of Transportation and Development appealed a trial-court judgment holding them solidarily liable for wrongful-death damages arising from an automobile collision with a utility pole.
STANDARD OF REVIEW	The appellate court reviewed factual determinations concerning whether the highway condition was hazardous under the manifest-error/deferential factual-review approach and reviewed the damage award for abuse of discretion. It examined whether the trial court's award was excessive only after considering the individual circumstances of the case.
PRECEDENTIAL VALUE	Published Louisiana Court of Appeal opinion; precedential within the court's jurisdiction subject to later authority.
PARTIES	Gulf States Utility Company, South Central Bell Telephone Company, State of Louisiana, Department of Transportation and Development v.

TOPICS

wrongful death negligence duty of care damages appellate procedure

PRACTICE AREAS

torts wrongful death premises liability damages appellate procedure

QUESTIONS PRESENTED

1. Whether DOTD was negligent in allowing a utility pole to remain in the middle of an improved highway shoulder and whether the pole was a legal cause of the accident.
2. Whether Rodney Prince's negligence constituted an intervening or sole legal cause relieving DOTD and the utility companies of liability.
3. Whether South Central Bell was liable for knowingly maintaining a utility pole in a hazardous location.
4. Whether GSU was liable when it did not own, relocate, or participate in placing the pole but merely used it under a joint-use agreement.
5. Whether the \$150,000 general-damage award to Arellanes was excessive.
6. Whether Arellanes could recover her own medical expenses, future medical expenses, and lost wages as damages through a wrongful-death action under Louisiana Civil Code article 2315.

HOLDINGS

1. DOTD was negligent because the utility pole's unusual placement in the middle of the improved shoulder created an unreasonable hazard, and DOTD had a duty to maintain reasonably safe highways and shoulders for motorists who inadvertently entered the shoulder and for passengers in those vehicles.
2. Prince's negligence did not constitute an intervening or sole legal cause relieving DOTD or South Central Bell of liability because Prince's negligence and the hazardous pole location were substantial contributing causes of the accident.
3. South Central Bell was liable under Louisiana Civil Code article 2315 because it knew of the unreasonable risk created by the pole's location, could have taken reasonable steps to eliminate the risk, and failed to do so.
4. GSU was not liable because South Central Bell solely owned and relocated the pole, and the record did not show that GSU participated in the relocation or knew of its movement.
5. The \$150,000 general-damage award to Arellanes was not excessive because her extraordinary, medically documented mental and physical suffering made the award reasonably supported by the particular circumstances.
6. Arellanes could not recover her own medical expenses, future medical expenses, or lost wages as separate damages through this wrongful-death action under Louisiana Civil Code article 2315; those amounts were reversed and deducted from the judgment.

KEY QUOTATIONS

"When the actionable negligence of two tort feorsors contributes in causing harm to a third party, each of them is responsible for the damage. They are solidarily liable." (447 So. 2d at 1117)

"having knowledge of the unreasonable risk of injury created by the pole, could South Central Bell take "reasonable steps under the circumstances to protect against the risk" that a driver who inadvertently left the roadway and even partially entered the shoulder would come into contact with the pole?" (447 So. 2d at 1118)

FACTUAL BACKGROUND

A vehicle driven by minor Rodney Prince moved partly onto the shoulder of Highway 190 at night and struck a utility pole located in the middle of the improved shoulder, killing passengers William Lang and Michael Benton. The shoulder was otherwise unobstructed for a substantial distance, the road curved toward the pole, and there was no grade differentiation warning a motorist that the vehicle was leaving the roadway. South Central Bell owned and had placed the pole, while GSU merely used it under a joint-use agreement; DOTD had known of the pole's location for 19 years. Arellanes suffered severe psychiatric and physical consequences after her son's death, including hospitalization, continuing medication, and medical expenses.

PROCEDURAL HISTORY

The consolidated wrongful-death actions were tried on the merits. The trial court held South Central Bell, GSU, DOTD, and Dairyland Insurance Company liable in solido and also held Rodney Prince liable to John Lang. Only GSU, South Central Bell, and DOTD appealed; Rodney Prince's judgment became final when he did not appeal. The appellate court affirmed liability as to South Central Bell and DOTD, reversed liability as to GSU, and reduced the award to Blanche Arellanes by eliminating certain special damages.

DISPOSITION

other

CASES CITED

- Willis v. State ex rel. Louisiana Department of Highways, 321 So. 2d 819 (La. App. 1st Cir. 1975), writ denied, 325 So. 2d 280 (La. 1976)
- LeBlanc v. State, 419 So. 2d 853 (La. 1982)
- Sinitiere v. Lavergne, 391 So. 2d 821 (La. 1980)
- Rue v. State, Department of Highways, 372 So. 2d 1197 (La. 1979)
- Dagnall v. Louisiana Department of Highways, 426 So. 2d 276 (La. App. 4th Cir. 1983), writ denied, 433 So. 2d 160 (La. 1983)
- Ketcher v. Illinois Central Gulf Railroad Co., 440 So. 2d 805 (La. App. 1st Cir. 1983), writ denied, 444 So. 2d 1220 (La. 1984)
- Russo v. Guillory, 322 So. 2d 233 (La. App. 4th Cir. 1975), writ denied, 325 So. 2d 608 (La. 1976)

- Dixie Drive It Yourself System New Orleans Co. v. American Beverage Co., 242 La. 471, 137 So. 2d 298 (1962)
- Olsen v. Shell Oil Co., 365 So. 2d 1285 (La. 1978)
- Hessifer v. Southern Equipment, Inc., 416 So. 2d 368 (La. App. 1st Cir. 1982), writ denied, 420 So. 2d 982 (La. 1982)
- Godwin v. Government Employees Insurance Co., 394 So. 2d 751 (La. App. 3d Cir. 1981)
- Kent v. Gulf States Utilities Co., 418 So. 2d 493 (La. 1982)
- Reck v. Stevens, 373 So. 2d 498 (La. 1979)
- Carollo v. Wilson, 353 So. 2d 249 (La. 1977)
- Bullard v. State, Department of Transportation and Development, Office of Highways, 413 So. 2d 606 (La. App. 1st Cir. 1982)
- Johnson v. Folse, 438 So. 2d 1137 (La. App. 1st Cir. 1983)
- Williams v. City of New Orleans, 433 So. 2d 1129 (La. App. 4th Cir. 1983), application not considered, 437 So. 2d 1135 (La. 1983)
- LaPlace v. Minks, 174 So. 2d 895 (La. App. 1st Cir. 1965), writ refused, 248 La. 123, 176 So. 2d 452 (1965)
- Holland v. St. Paul Mercury Insurance Co., 135 So. 2d 145 (La. App. 1st Cir. 1961)
- Buchanan v. Tangipahoa Parish Police Jury, 426 So. 2d 720 (La. App. 1st Cir. 1983)
- Hebert v. Lefty's Moving Service, 389 So. 2d 855 (La. App. 4th Cir. 1980)
- Courtney v. Lambert Construction Co., 355 So. 2d 72 (La. App. 1st Cir. 1978), writ denied, 356 So. 2d 430 (La. 1978)