

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James Jerry Cambio, Jr., an :
adult individual, :
Appellant :
v. : No. 638 C.D. 2008
: Submitted: October 14, 2008
North Sewickley Township, a :
Pennsylvania Municipality, and :
Michael John Markun, an adult :
individual, and Bernard E. Corrigan, :
an adult individual :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: November 26, 2008

James Jerry Cambio, Jr., appeals an order of the Court of Common Pleas of Beaver County (trial court) denying his post-trial motion to set aside nonsuits entered in favor of the defendants in his negligence action and requesting a new trial. In this case, we consider whether Cambio produced sufficient evidence from which a jury could reasonably infer that either of the defendants owed a duty of care to Cambio. Finding no error in the trial court's holding that Cambio failed to produce such evidence, we affirm.

This matter stems from a motor vehicle accident that occurred on June 7, 2005, at the intersection of Brighton and Grandview Roads in North Sewickley Township. Cambio was proceeding along Grandview Road and, without stopping his vehicle, turned left onto Brighton Road. Although there is a stop sign at the

intersection of Grandview and Brighton, Cambio did not stop because the sign was obscured by tree branches. Upon turning, Cambio collided with a police vehicle operated by Officer Michael John Markun. As a result of the accident, Cambio's vehicle was totaled and he sustained bodily injuries.

Cambio filed a tort claim against the Township and Bernard E. Corrigan.¹ Cambio claimed that the Township owned or controlled the stop sign and that the Township was negligent because it had not properly maintained the stop sign. Specifically, the complaint alleged that the Township "failed to keep and maintain the roadway and stop sign in a proper, legal and clear condition for drivers." Amended Complaint, ¶ 13(p); Reproduced Record at 7a (R.R. ___).

In response, the Township admitted that the accident had occurred within the Township, but the Township did not admit control or ownership of the stop sign. Rather, the Township denied that it was "in any way negligent." Township's Answer and New Matter, ¶ 13; R.R. 13a.

Cambio's complaint also alleged that Corrigan owned the tree that had obscured the stop sign. It further alleged that Corrigan was negligent in "failing to maintain his property in allowing the trees on his property to grow over the stop sign" and "failing to maintain his property in not cutting away from the stop sign trees growing on his property which obstructed the stop sign to operators of motor vehicle[s]." Amended Complaint, ¶¶ 13(s)-(t); R.R. 7a. Notably, the complaint did not specifically allege that the tree in question was located on Corrigan's property.

¹ Cambio also named Officer Markun as a defendant and claimed that he had negligently operated his police vehicle. The trial court entered a nonsuit in favor of Officer Markun, which Cambio did not challenge in his post-trial motion.

In response, Corrigan admitted to being the owner of the property located at 2725 Brighton Road. With respect to Cambio's allegations that he was negligent in not maintaining the trees near the stop sign, Corrigan answered that "strict proof thereof is demanded at the time of trial." Corrigan's Answer and New Matter, ¶ 13; R.R. 28a. Corrigan neither admitted nor denied that the tree was located on his property.

At trial, Cambio testified on his own behalf and offered the testimony of his wife, Theresa Cambio, and his chiropractor, Dr. Larry Dolter. Cambio testified about the accident and stated that he did not see the stop sign at the end of Grandview Road because it was obscured by tree branches. Notes of Testimony 40-41 (N.T. ___); R.R. 97a-98a. Cambio testified about several photographs taken of the stop sign and the roadways in question. One of those photographs, showing that the trees surrounding the stop sign had been trimmed, was taken by Corrigan, and it was Corrigan's counsel who moved this particular photograph into evidence during his cross-examination of Cambio. N.T. 97-99; R.R. 154a-156a. The other photographs were moved into evidence by Cambio's counsel. Cambio then testified about the effect of his injuries on his personal life and career. Theresa Cambio testified about the impact of her husband's injuries upon his daily life and on their relationship. Dr. Dolter's testimony detailed his treatment and diagnosis of Cambio. This testimony and the photographs constituted Cambio's entire case in support of his claim for damages.

At the close of Cambio's case, all defendants moved for an entry of nonsuit. The motions were granted. With respect to the Township and Corrigan, the trial court explained:

... [Cambio] presented no evidence establishing who owned the land upon which the stop sign was located, nor any evidence

demonstrating that Appellee North Sewickley Township, owned and maintained the stop sign. [Cambio] also did not establish that the stop sign was under the care, custody and control of the Township, nor that the Township had knowledge that the trees surrounding the stop sign were overgrown. The evidence presented by [Cambio] focused on his recitation of what occurred the day of the accident and his injuries. While [Cambio] admitted into evidence photographs of the stop sign and the roadways in question, *he did not link those photos with evidence regarding ownership of the stop sign or of the property upon which the stop sign was located.* Further, [Cambio] never offered to read the Answers of the [Township and Corrigan] into evidence as admissions, and at the side bar discussion regarding the [Township's and Corrigan's] motions for nonsuit, he did not move to reopen his case in chief. *There was absolutely no evidence presented establishing any duty on behalf of North Sewickley Township or Corrigan.* Thus, our entry of nonsuit was proper.

Trial Court's PA. R.A.P. 1925(a) Opinion at 5-6 (emphasis added) (footnotes omitted). Cambio filed a motion for post-trial relief, and it was denied. The trial court entered judgment in favor of the Township and Corrigan, and Cambio appealed to this Court.

On appeal,² Cambio contends that the trial court erred in granting a nonsuit in favor of the Township and Corrigan. Cambio contends that a jury could have reasonably inferred from the testimony and photographs introduced at trial that the Township owned or controlled the stop sign and Corrigan owned or controlled the

² This Court's scope of review of a trial court's denial of a motion to set aside a nonsuit is limited to determining whether the trial court abused its discretion or committed an error of law. The standard for reviewing a decision to grant a nonsuit is well established. A nonsuit may not be granted unless, viewing all the evidence and all reasonable inferences arising from it in the light most favorable to the plaintiff, the jury could not reasonably conclude that the elements of the cause of action have been established. *Thomas v. City of Philadelphia*, 804 A.2d 97, 102 n.7 (Pa. Cmwlth. 2002) (internal citations omitted).

tree branches. Accordingly, Cambio requests that this Court reverse the trial court's nonsuit and order a new trial.

To establish a cause of action sounding in negligence, Cambio had to present evidence sufficient to establish four essential elements:

- (1) a duty or obligation recognized by the law requiring the defendant to conform to a certain standard of conduct for the protection of others against unreasonable risks;
- (2) the defendant's failure to conform to the standard required;
- (3) a causal connection between the conduct and the resulting injury;
- and (4) actual loss or damage resulting to the plaintiff.

McMahon v. Pleasant Valley West Association, 952 A.2d 731, 735 (Pa. Cmwlth. 2008). To establish the “duty or obligation recognized by the law,” Cambio relied exclusively on statutory law. In the case of the Township’s duty to maintain the stop sign, Cambio cited the Judicial Code; in the case of Corrigan’s duty to keep the stop sign clear of the overgrown tree branches, Cambio cited the Vehicle Code.

The threshold requirement in each statute is ownership or control. Section 8542(b)(4) of the Judicial Code establishes that the “dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting systems” must have been “under the *care, custody or control*” of the Township in order to trigger a duty in the Township arising from those conditions. 42 Pa. C.S. §8542(b)(4) (emphasis added).³ Likewise, Section 6112(a) of the Vehicle Code

³ Section 8542(b)(4) provides that a local agency may incur liability as a result of the following acts:

A dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting systems under the care, custody or control of the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be

(Footnote continued on the next page . . .)

provides that “[i]t is the duty of the *owner of real property*” to remove any vegetation which may obstruct a driver’s view and cause a traffic hazard. 75 Pa. C.S. §6112(a) (emphasis added).⁴ Thus, Cambio was required, as a threshold matter, to offer evidence that the Township owned or controlled the obscured stop sign and that Corrigan owned or controlled the tree that allegedly obstructed the stop sign.

A trial court may grant a nonsuit only where the evidence is so conclusive as to exclude the reasonable probability of a contrary inference. In *Daddona v. Thind*, 891 A.2d 786, 816 (Pa. Cmwlth. 2006), this Court enunciated the high standard for granting a nonsuit:

Entry of a non-suit is proper only *if the fact-finder, viewing all the evidence in favor of the burdened party, could not reasonably conclude the essential elements of the cause of action were established.* A compulsory non-suit can only be granted in cases where it is clear a cause of action was not established. *The trial court must give the non-moving party the benefit of all favorable evidence along with all reasonable factual inferences arising from that evidence, resolving any conflict in the evidence in favor of the non-moving party.* A compulsory non-suit is valid only in a clear case where the facts and circumstances lead to only one conclusion—the absence of liability.

(continued . . .)

charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

42 Pa. C.S. §8542(b)(4).

⁴ Section 6112 of the Vehicle Code states:

It is the duty of the owner of real property to remove from the property any tree, plant, shrub or other similar obstruction, or part thereof, which by obstructing the view of any driver constitutes a traffic hazard.

75 Pa. C.S. §6112(a).

(emphasis added) (internal citations omitted). Cambio contends that the trial court failed to give him the benefit of all favorable evidence along with all reasonable factual inferences arising from that evidence.

Specifically, with respect to the Township, Cambio asserts that it was never disputed that the accident took place on streets located in the Township. It follows, Cambio argues, that the sign was placed or maintained by the Township. With respect to Corrigan, Cambio asserts that the photograph taken by Corrigan showing that the trees surrounding the stop sign had been trimmed was sufficient to establish Corrigan's ownership and control of the trees. In support, he notes that Pennsylvania Rule of Evidence 407 permits evidence of an improved condition, such as trimmed branches, to show ownership where ownership is contested.

We address, first, Cambio's claim that the Township owned and controlled the stop sign because Grandview Road lies within the Township's borders. We agree with the Township that the location of Grandview Road is not dispositive of ownership or control of the stop sign. Grandview Road could just as easily be a State or County road as a Township road. Permitting the issue of ownership or control to go to a jury without any evidence on this crucial element would empower the jury to speculate. *Smith v. Bell Telephone Company*, 397 Pa. 134, 138, 153 A.2d 477, 479 (1959) (holding that the jury may not "reach its verdict merely on the basis of speculation or conjecture, but that there must be evidence upon which logically its conclusion may be based."). In short, the evidence, even viewing it in Cambio's

favor, did not establish the Township's ownership or control of the roads or the stop sign.⁵

We turn, next, to Cambio's argument that Corrigan's photograph, admitted as Corrigan Exhibit C, proved Corrigan's ownership and control of the tree. Cambio relies upon Pennsylvania Rule of Evidence 407, which states:

When, after an injury or harm allegedly caused by an event, measures are taken which, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove that the party who took the measures was negligent or engaged in culpable conduct, or produced, sold, designed, or manufactured a product with a defect or a need for a warning or instruction. *This rule does not require the exclusion of evidence of subsequent measures when offered for impeachment, or to prove other matters, if controverted, such as ownership, control, or feasibility of precautionary measures.*

Pa. R.E. 407 (emphasis added).

Cambio misapprehends the meaning of Rule 407. It establishes that evidence of subsequent remedial measures is not admissible to prove the negligence of the party taking the measures. A limited exception to this basic rule is carved out for evidence of a defendant's subsequent remedial measures when it is offered to prove ownership or control, as opposed to negligence. In this case, there was no evidence offered that Corrigan was the person who cut the branches of the tree after the

⁵ Additionally, there was no evidence that the Township had actual notice of the condition of the stop sign "at a sufficient time prior to the event to have taken measures to protect against the dangerous condition," as required by Section 8542 of the Judicial Code, 42 Pa. C.S. §8542(b)(4).

accident.⁶ It could have been someone from the Township or someone from the County. Corrigan Exhibit C showed that sometime after the accident, the tree branches were trimmed by someone and that Corrigan had photographed the resulting landscape. The photograph does not prove that Corrigan cut the branches. Even if Corrigan did cut the branches, this action alone does not prove his ownership or control of the tree. Other evidence, such as an admission by Corrigan, a deed or credible third-party testimony, was needed to prove that Corrigan owned or controlled the tree.

Cambio failed to make the threshold showing of ownership and control of the stop sign and trees that was essential to establishing that either the Township or Corrigan owed a duty to him that was breached. In the absence of that essential element of Cambio's claim of negligence, the trial court had no choice but to grant a nonsuit in favor of the Township and Corrigan.

Accordingly, the order of the trial court is affirmed.

MARY HANNAH LEAVITT, Judge

⁶ When the trial court was entertaining his opponents' motions for nonsuit, Cambio acknowledged that there was no evidence that Corrigan had trimmed the branches. He sidestepped discussion of subsequent remedial measures:

MR. NEFF [Township's counsel]: There's no testimony as to who cut the trees.

MR. SANTICOLA [Cambio's counsel]: *Yeah, I don't want to get into corrective measures*, and I understand Mr. Neff's argument certainly.

N.T. 125; R.R. 182a (emphasis added).

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ORDER

AND NOW, this 26th day of November, 2008, the order of the Court of Common Pleas of Beaver County, dated March 14, 2008, dismissing the Motion for Post-Trial Relief filed by James Jerry Cambio, Jr. and entering judgment in favor of North Sewickley Township and Bernard E. Corrigan is AFFIRMED.

MARY HANNAH LEAVITT, Judge