

**[J-31-99]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

TRACY LYN STARR	:	No. 48 W.D. Appeal Docket 1998
	:	
v.	:	Appeal from the Order of Commonwealth
	:	Court entered January 9, 1998 at 610
OTTAVIO C. VENEZIANO, FRANK J.	:	C.D. 97, affirming the Order of the Court
ZOTTOLA CONSTRUCTION, INC. AND	:	of Common Pleas of Allegheny County,
COMMONWEALTH OF PENNSYLVANIA,	:	Civil Division entered January 29, 1997 at
DEPARTMENT OF TRANSPORTATION,	:	No. GD94-11399.
	:	
Appellees	:	
	:	
v.	:	
	:	
RICHLAND TOWNSHIP,	:	
	:	
Appellant	:	ARGUED: March 8, 1999

**DISSENTING OPINION**

**MADAME JUSTICE NEWMAN**

**DECIDED: MARCH 24, 2000**

I respectfully dissent. As Justice Saylor has stated in his Opinion, we granted this appeal to determine whether and under what circumstances a township may be held liable for an accident that occurs on a state highway because the township did not restrict access to the highway from a local road under its control. A municipality has a duty to make its roadways reasonably safe for their intended use. See, McCalla v. Mura, 649 A.2d 646 (Pa. 1994)(plurality opinion). It is a question for the jury to determine whether the roadway was dangerous because it lacked appropriate traffic control devices, such as signage or traffic signals, and also to establish whether the lack of these devices caused the traffic accident at issue. McCalla, 649 A.2d at 649.

I disagree with the Majority's determination that Starr failed to provide the jury with sufficient evidence upon which to determine that Richland Township (the Township) breached its duty to maintain Sandy Hill Road in a reasonably safe condition. At trial, Starr elicited evidence that on May 24, 1991, Dean Bastianini, Acting Secretary of the Township Board of Supervisors (Board) sent a letter to PennDOT's District Engineer, Henry Nutbrown, in which he acknowledged that a dangerous sight limitation problem existed at the intersection of Route 8 and Sandy Hill Road. In response, William Sacco, PennDOT's Assistant District Engineer, wrote to the Board on June 10, 1991, stating, inter alia, that prohibiting the left turn out of a local road may be considered when inadequate sight distance exists. He further noted that upon request from the Township, PennDOT would perform a study regarding the feasibility of prohibiting turns at the intersection of Route 8 and Sandy Hill Road.

In response to a question about what PennDOT had done to make the intersection safer, District Traffic Engineer Thomas Fox testified that once PennDOT determined that there was not enough traffic to warrant a signal:

[W]e tried to come up with some other options to throw out to the township.

We looked at the speeding issue. There is a potential for speeding on Route 8. We felt maybe vigorous enforcement of speeding could bring people down closer to the speed limit.

We looked at the idea of a flashing beacon. Oftentimes, when you don't get -- when you get intersections that don't warrant the numbers, they use a flashing beacon. We have sometimes used those in other areas. We offered the flashing beacon as a suggestion.

We offered the possibility do we want to go out and look at some left turn probations (sic) on your road and our road.

The township is capable and they are allowed to do such studies themselves. We offered to do the study on any of the roads, our road or their road. It's critical for their road because they would be the ones that would have to put up the sign.

But more importantly, they would have to be the ones that would force (sic) the turn prohibition. Those are the three things that we felt we could pursue and see that would help the situation, especially at Sandy Hill.

R.R. 367a.

Starr also presented the expert testimony of Professor Ronald Eck, a civil engineer. He testified that a no-left-turn sign would have prevented Starr's accident, assuming that the other motorist had obeyed the sign. R.R. 547a.

A review of the record indicates that Richland knew that a dangerous condition existed at the intersection of Route 8 and Sandy Hill Road. Nevertheless, it declined PennDOT's invitation to ask it to perform a feasibility study for a no-left-turn sign, and failed to perform its own feasibility study. Instead, it continued to petition PennDOT to install a traffic signal. I believe that Starr presented sufficient evidence for a jury to determine that Richland breached its duty to maintain its road in a reasonably safe condition, and that its failure to take steps toward the installation of a no-left-turn sign at a dangerous intersection was negligent.

Accordingly, I would affirm the decision of the Commonwealth Court.