

[J-193-99]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

DORIS YOUNG AND DIANE LYNCH	:	Nos 7 & 8 Eastern District Appeal Docket
ADMINISTRATRIX OF THE ESTATE OF	:	1999
CHARLES YOUNG, DECEASED,	:	
	:	
Appellees	:	Appeal from the Opinion and order of the
	:	Commonwealth Court entered on June 11,
	:	1998 at Nos. 1843 and 1844 C.D. 1997
v.	:	reversing the Order entered on March 3,
	:	1997, in the Court of Common Pleas of
	:	Philadelphia County, Civil Division, at
COMMONWEALTH OF PENNSYLVANIA	:	4306 and 4307, 1991.
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Appellant	:	714 A.2d 475 (Pa. Commw. 1998)
	:	
v.	:	
	:	
DRISCOLL CONSTRUCTION	:	
COMPANY, INC.	:	
	:	
Appellant	:	ARGUED: October 18, 1999
	:	

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: January 20, 2000

I respectfully dissent, as the record does not support that Appellants Commonwealth of Pennsylvania Department of Transportation (PennDOT) and Driscoll Construction Company, Inc. complied with even the minimal mandates attendant to placement of warning signs approaching work zones. Pursuant to § 203.43(a) of the Pennsylvania Code, PennDOT and Driscoll had a statutory duty to erect and maintain warning signs in

order to alert drivers of unusual road conditions occasioned by work zones.¹ Furthermore, § 203.43(b)(7) provides that there shall be warning signs at least one mile in advance of a work zone located on a road where the posted speed limit is 50 to 55 miles per hour.² Moreover, § 203.43(b)(7)(i) further provides that whenever a work zone is anticipated to cause slowing or queuing of vehicles in advance of the one-mile sign, additional advance warning signs should be installed.³

I find that the record does not support the proposition that Appellants complied with these statutes and therefore I would find that they were negligent per se. As such, even absent expert testimony, this matter should have been permitted to proceed to trial for a determination as to whether PennDOT's and Driscoll's negligence was a substantial factor in bringing about the Youngs' accident.

¹ § 203.43(a) states:

Function of warning signs. Warning signs are used to notify drivers of unusual conditions or potential hazards associated with work zones. Drivers should be properly alerted of unusual conditions and potential hazards in sufficient time to adjust their speed and driving practices to the impending conditions.

67 Pa. Code § 203.43(a).

² "(7) Location of advance warning signs for long term operations shall comply with Table 2 [providing for warning signs where the normal speed limit on the approach to the work area is 50 or 55 MPH to be placed at 1 mile, ½ mile, 1500 feet, 1000 feet and 500 feet] . . ."

67 Pa. Code § 203.43(b)(7) and Table 2.

³ "(i) On high volume highways where the slowing or queuing of vehicles is anticipated to occur in advance of the location of the [one mile] sign additional advance warning signs should be installed."

67 Pa. Code § 203.43(b)(7)(i).