IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN BOILEAU, Respondent, v. SANG RYONG YOO (aka "Sam Yoo"), Appellant, ANNA MARIE SECRETO, MARK R. GREGG and JANE DOE GREGG, and the marital community thereof, Defendants, CITY OF SEATTLE, a Washington municipality, and AMANDA MCGARTY and JOHN DOE MCGARTY, and the marital community thereof, Respondents.	)	NO. 66233-3-I DIVISION ONE UNPUBLISHED OPINION FILED: September 10, 2012

Leach, C.J — Sang Ryong Yoo, aka Sam Yoo, appeals from a jury verdict finding him solely responsible for an automobile accident. He contends the trial court erred in excluding evidence of prior accidents occurring at the same intersection. But the offer of proof failed to demonstrate that the prior accidents were sufficiently similar to suggest either the existence of a dangerous condition at the time of Yoo's accident or that respondents had notice of such a condition. The trial court therefore did not abuse its discretion in excluding the proposed evidence. We affirm.

FACTS

Shortly after noon on June 14, 2006, appellant Yoo was driving southbound on Fremont Avenue in Seattle. As he approached the intersection with North 80th Street, Yoo failed to slow down or stop at a stop sign and collided with a car driven by John Boileau, who was traveling east on North 80th Street. The impact forced Yoo's car into a stop sign and retaining wall on the southeast corner of the intersection.

Boileau filed this action for personal injuries against Yoo in 2008. Boileau eventually amended the complaint to join defendants Amanda McGarty, who owned the property adjacent to the stop sign, and the City of Seattle (City). Boileau alleged that McGarty and the City had negligently failed to prevent trees and bushes from obscuring the stop sign on Fremont Avenue.[1]

Before trial, the City moved to exclude portions of Boileau's proposed evidence, including (1) evidence of a 2002 car-pedestrian accident at the intersection of Fremont and North 80th Street, which resulted in the City issuing a warning to McGarty to trim tree branches obscuring the stop sign; (2) testimony by Andrew Finseth, a nearby resident, about conditions at the intersection from 2005 to 2007; and (3) photographs of the intersection in 2003. The trial court granted the City's motion, concluding the proposed evidence did not support an inference that the City knew or should have

[1] Boileau also named defendants associated with two unrelated automobile accidents that are not at issue in this appeal.

known of a dangerous condition at the intersection in June 2006.

At trial, Yoo testified that at the time of the accident, he was on his way to work and had taken an alternate route on Fremont Avenue because he was running late. Yoo admitted that he did not slow down or stop despite seeing "a bigger road" as he approached North 80th Street. He also acknowledged an obligation to slow down at an uncontrolled intersection.

Yoo told investigating officers that he did not see the stop sign on Fremont before entering the intersection. Nor did he recall seeing a painted stop bar across the roadway or the striped post for the stop sign.

When Yoo drove slowly through the intersection a few days later, he noticed that "something was blocking [the stop sign], and it's part of the tree." Yoo initially estimated that the stop sign was obscured until he approached to within 10 to 15 feet but later indicated it could have been 20 feet or more. He conceded that his decision to continue through the intersection on the day of the accident had "nothing to do" with whether or not he had seen the stop sign.

Seattle Police Officer Karen Pio responded to the accident. Yoo told her that he was in a hurry and did not see the stop sign. Pio reviewed the entire intersection as part of her investigation and confirmed the stop sign on Fremont was "clearly visible." She did not, however, view the stop sign from the perspective of an approaching car.

McGarty testified that at the time of the accident, the stop sign on Fremont

Avenue was on the parking strip next to the house that she has owned since 1999. The parking strip on both sides of the street included a row of purple plum trees about 8 to 10 feet apart that were present when McGarty purchased the house. A tenant has occupied her house since 2002. McGarty was not aware of the 2006 accident until Boileau named her as a defendant in 2009.

Over the years, McGarty and her tenant regularly maintained the parking strip, including trimming the trees and removing small branches. McGarty frequently traveled southbound on Fremont Avenue and never had a concern about the trees obscuring the stop sign.

At the conclusion of Boileau's case, the trial court granted the City's motion for judgment as a matter of law.[2] The court concluded there was no evidence suggesting the City had actual knowledge of a dangerous condition at the intersection or that a dangerous condition had existed for so long that the City, through the exercise of reasonable care, should have discovered it.

By special verdict, the jury found that McGarty was not negligent and Yoo's negligence was the sole cause of Boileau's damages. The court entered judgment for $125,458.66 in favor of Boileau. Yoo appeals.[3]

DECISION

[2] CR 50(a)(1).

[3] The City of Seattle and Amanda McGarty have filed response briefs. John Boileau has not filed a response brief.

Yoo contends that the trial court erred in granting the City's motion to exclude the following evidence of prior accidents at the same intersection.

2002 Accident

Boileau's proposed exhibit 17 indicated that in May 2002, a pedestrian complained to the City that he was struck by a car while crossing the street because tree limbs obstructed the stop sign. The City's Department of Design, Construction and Land Use issued a warning to the adjacent property owner to trim the tree limbs blocking the stop sign. A City inspection on June 11, 2002, confirmed that the tree limbs had been pruned to provide clear visibility of the stop sign, and the City closed the file.

2005 Accidents

Boileau proposed to call Andrew Finseth, who had lived at the southeast corner of the intersection where the accident occurred since August 2003. In an offer of proof, Finseth recalled accidents occurring at the intersection about once a month from June to September in the years 2005 to 2007. According to Finseth, the accidents involved collisions between cars traveling southbound on Fremont that failed to stop at the stop sign and cars travelling on North 80th. Finseth did not recall any accidents occurring at other times of the year during this period.

In June 2007, Finseth drove southbound on Fremont through the intersection for the specific purpose of checking the visibility of the stop sign. When he found that tree

limbs obscured the stop sign, he filed a complaint with the City. In September 2007, the City replaced the stop signs at the intersection with a traffic signal.

Yoo argues that the prior accidents in 2002 and 2005 were admissible to show the existence of a dangerous condition at the time of his accident in June 2006 and the City's notice of the dangerous condition.

Evidence of a prior accident that occurred "under the same or substantially similar circumstances is admissible for the purpose of showing a dangerous or defective condition and the defendant's notice of such condition."[4] But because such evidence may inject collateral issues into a case, "there must be a substantial similarity shown between the proffer and the case at bar."[5] Factors relevant to this determination include "the extent of the similarity, the presence of modifying circumstances, and the absence or presence of the same essential conditions."[6]

The requisite degree of similarity necessarily depends on the specific facts of each case.[7] We therefore accord the trial court broad discretion in determining the relevance and admissibility of prior accident evidence and will overturn its decision only for a manifest abuse of discretion.[8]

Although the 2002 accident apparently involved tree limbs obscuring the stop

[4] Stewart v. State, 92 Wn.2d 285, 304, 597 P.2d 101 (1979).
[5] Blood v. Allied Stores Corp., 62 Wn.2d 187, 189, 381 P.2d 742 (1963).
[6] Breimon v. Gen. Motors Corp., 8 Wn. App. 747, 755, 509 P.2d 398 (1973).
[7] See Blood, 62 Wn.2d at 189.
[8] See Stewart, 92 Wn.2d at 305.

sign, the offer of proof provided no additional details about the surrounding circumstances. In response to the City's complaint, the property owner immediately trimmed the branches, and the City closed the case. There was no evidence of any further complaints to the City about the intersection until June 2007, one year after Yoo's accident. Nor was there evidence suggesting a dangerous condition could develop at the same intersection at any particular time in the future. And Yoo conceded at trial that the stop sign was in fact visible from a certain distance.

Under the circumstances, the 2002 accident was an isolated incident that did not support a reasonable inference of the existence of a dangerous condition in 2006 or suggest that the City or McGarty knew or should have known of the existence of a dangerous condition at the time of the accident.

Yoo's attempt to bootstrap the 2002 accident with Finseth's description of accidents occurring in 2005 is not persuasive. Finseth reported a series of collisions occurring from June to September 2005, allegedly as a result of drivers failing to heed the stop sign on Fremont. But Finseth had no personal knowledge of the circumstances of those accidents, and the offer of proof was silent as to whether tree limbs obscured the stop sign at the time of the accidents. Finseth observed the tree near the stop sign "becoming more and more overgrown" in 2005. He acknowledged, however, that despite driving southbound regularly on Fremont, he "never specifically paid attention to any potential outgrowth of the tree" until he intentionally looked for it in

June 2007, one year after Yoo's accident.

Finseth's proposed testimony therefore failed to support an inference that the 2005 accidents were substantially similar to the 2006 accident. As the trial court correctly observed, admission of his testimony would have required wholesale speculation by the jury about the circumstances of the prior accidents.

Yoo's reliance on Boeing Co. v. State[9] is misplaced. In Boeing, the plaintiff alleged that the low clearance of a 12-foot underpass constituted an inherently dangerous condition and that warning signs were inadequate to prevent accidents. On appeal, the court held that evidence of the number of prior accidents at the underpass was admissible, even without a showing of precise similarity, because the evidence was "designed to show that a dangerous condition existed at the underpass."[10] But the court also noted that other evidence indicated "all or most of these accidents were of the type experienced by the respondent's carrier."[11]

Moreover, the dangerous condition in Boeing—the low height of the underpass—remained unchanged during the period of the prior accidents. Here, however, the alleged dangerous condition involved components that changed not only during the course of the seasons but also over the course of years. And it was undisputed that the dangerous condition had been fully mitigated in 2002. Under these

[9] 89 Wn.2d 443, 572 P.2d 8 (1978).
[10] Boeing, 89 Wn.2d at 449.
[11] Boeing, 89 Wn.2d at 449.

circumstances, the mere occurrence of prior accidents at the intersection is insufficient to establish the existence of a specific dangerous condition. The relevance of the prior accidents necessarily depended on a showing that the circumstances were similar to those present in 2006.

The record failed to demonstrate that the 2002 and 2005 accidents were substantially similar. The trial court therefore did not abuse its discretion in excluding the proposed evidence.

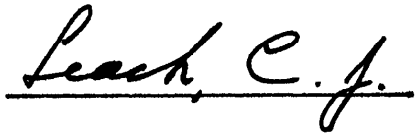
2003 Photographs

Yoo also challenges the trial court's exclusion of three photographs of the intersection taken in July 2003. The photographs appear to depict the stop sign on Fremont Avenue and the adjoining trees from a distance but do not provide a view of the intersection from Yoo's perspective as he approached the stop sign.

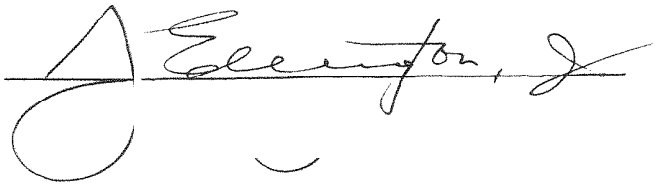
Yoo contends the photographs were relevant to illustrate the type of tree involved in the accident, its proximity to the stop sign, and its growth over time. But none of the photographs showed a view of the stop sign and tree from the direction that Yoo was traveling before the accident. The trial court commented that the perspective of the photographs was not helpful to the issues in the case. Yoo has not made any showing to the contrary or even addressed the specific photographs. We find no abuse of discretion.[12]

[12] See Toftoy v. Ocean Shores Props., Inc., 71 Wn.2d 833, 836, 431 P.2d 212 (1967)

Affirmed.



WE CONCUR:



(admission of photographs lies within the sound discretion of the trial court).