IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WILLIAM D. BLAINE and MICHELLE A. BLAINE, individually and as husband and wife, JAYME R. CROW and JAMES W. CROW,	)	**No. 29015-8-III (consolidated with No. 29049-2-III)**
Appellants,	)	**Division Three**
v.	)	
BENTON COUNTY,	)	
Respondent.	)	**UNPUBLISHED OPINION**

Korsmo, J. — An accident on an icy bridge left two people badly injured. The trial court granted Benton County's motion for summary judgment concerning its role in maintaining the bridge and surrounding roadway. We affirm.

FACTS

The Clodfelter Bridge crosses Interstate 82 and a canal in Benton County. The bridge had been treated with deicer on December 21, 2006. The area received about an

inch and one-half of snow on December 23. A member of the county's road crew sanded portions of Clodfelter Road approaching the bridge. He did not sand the bridge itself because his sand was mixed with salt and the road department's policy was that the bridge not be exposed to salt.

About 10:00 p.m. that evening, there was an accident near the bridge that damaged some guardrails when a car went off the road. The driver blamed an icy bridge for causing him to lose control. The responding deputy sheriff cited the driver for speed too fast for conditions and later reported that he had no difficulty crossing the bridge. He reported the damaged guardrails and requested that they be repaired. The deputy says he did not request that action be taken concerning the road or bridge surfaces, while the driver stated that he overheard the deputy calling for the road to be treated.

William and Michelle Blaine drove to church on Sunday morning, December 24. They crossed the bridge twice without incident. Jayme Crow and Scott Musser also crossed the bridge that morning without incident. About 11:00 a.m., Michael Bauer, driving a Subaru equipped with snow tires, slid off the road while driving across the bridge. Geri Bauer, Michael's mother, arrived to help him. She called 911 and told the operator that they needed to get a sand truck out to the bridge. About five to ten minutes later, Michelle Blaine, who decided to go to the store immediately after returning from

church, drove her car across the bridge. Her car began sliding uncontrollably as she crossed and she ended up in the ditch on the same side of the bridge as the Bauers. Ms. Blaine's husband drove to the bridge to assist her in pulling her van out of the ditch. He left his truck parked on the roadway. Shortly thereafter, Jayme Crow drove across the bridge, lost control of her vehicle, and collided with Mr. Blaine's truck. Ms. Crow and Mr. Blaine were severely injured. Mr. Crow, who was riding with Ms. Crow, was slightly injured. Benton County Sheriff's Deputies arrived on the scene about 11:30 a.m. They noticed that the roadway was icy and called for a sand truck.

The Blaines and Crows (drivers) sued each other, and both brought in Benton County (County) as a defendant. The County eventually moved for summary judgment and its motion proceeded to oral argument. The trial court granted the motion, ruling that the County did not have sufficient notice of the slippery conditions on December 24 in time to respond before the accident.

The drivers soon moved for reconsideration on the basis of the newly discovered evidence of the late December 23 accident. They attached the accident report and an affidavit from the driver. The County responded with an affidavit from the responding deputy sheriff and moved to strike the motion on the basis that the evidence was not newly discovered since it was a public record and also had been in the hands of the

Crows' insurance company.

The trial court also heard oral argument on the reconsideration and expressed some thoughts on the matter before taking the case under advisement. Despite ultimately granting the County's motion to strike, the trial court appears to have considered the December 23 accident evidence. It also apparently accepted the argument that the icy condition on the 23rd was different from the ice on the morning of the 24th that had newly formed after the drivers had already used the bridge that morning.

The drivers timely appealed to this court.

ANALYSIS

In light of the trial court's apparent consideration of the December 23 incident, we will treat the two hearings as presenting one issue.[1] Where the bridge was not icy earlier on the morning of the 24th, we agree with the trial court that the County did not have time to become aware of and rectify the condition before the accident at issue.

Well settled standards govern this appeal. This court reviews a summary judgment *de novo*, performing the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn from them, are viewed in the light most favorable to the nonmoving party. *Id*. If there is

[1] In light of our disposition of the case, we do not reach the County's alternative argument about the form of the dismissal orders.

no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law.[2] *Id*.

A government has an obligation to maintain roadways in a safe condition. In particular, it must "maintain its roadways in a condition that is reasonably safe for ordinary travel." *Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002). That does not mean that the government is an insurer of the roadways. *Teater v. City of Seattle*, 10 Wash. 327, 329, 38 P. 1006 (1894). Instead, there must be both notice of a dangerous condition that it did not create and an opportunity to alleviate the problem before liability can attach. *Nibarger v. City of Seattle*, 53 Wn.2d 228, 229, 332 P.2d 463 (1958). The fact that existing weather conditions are likely to create icy roads is not sufficient to establish liability. *Laguna v. Dep't of Transp.*, 146 Wn. App. 260, 265, 192 P.2d 374 (2008).

Laguna and *Leroy v. State*, 124 Wn. App. 65, 98 P.3d 819 (2004), are two recent cases discussing governmental liability for icy roads. *Leroy* involved an accident on an icy bridge. The government was unaware that the bridge was then icy, but was aware that bridges do ice up first and that the weather forecast called for icy conditions. *Id*. at 67-68. The court declined to find liability, noting that potentially bad conditions are not

[2] It appears that the only relevant disputed facts concern the condition of the bridge at the time of the December 23 incident and whether the surface conditions were reported. We will consider that incident in a light most favorable to the drivers.

the same as actual knowledge of bad conditions. *Id*. at 70.

Laguna involved ice that formed on an interstate highway due to freezing fog. Again, the State was on notice that the conditions were ripe for the fog to freeze, but was unaware that ice had actually formed. 146 Wn. App. at 262. The court declined to impose liability for failing to act when it anticipated that dangerous conditions would be created. *Id*. at 265.

As the trial court recognized, the material facts of this case are not in dispute. The icy conditions that actually caused this accident had been reported to authorities merely 20 minutes earlier. That is an insufficient period of time for the government to remedy the situation. *Wright v. City of Kennewick*, 62 Wn.2d 163, 167, 381 P.2d 620 (1963) (two day notice of snow on the ground and formation of recent crust within a few hours of the accident insufficient as a matter of law to impose liability).

The only significant question then is whether notice of the accident occurring 14 hours earlier on the night of the 23rd changed the equation. In light of *Wright*, it is doubtful that 14 hours is even a sufficient period of notice.[3] Nonetheless, we need not address that contention because we agree with the trial court that the condition that caused this accident was not the same condition that caused the accident the evening

[3] In *Nibarger*, a case involving a slip and fall on a sidewalk, 15 hours after snowfall completed was insufficient as a matter of law to impose liability.

before. The evidence unambiguously shows that the bridge was fine to cross until shortly before this accident. Indeed, both drivers had successfully crossed the bridge within the previous hour. While ice may have been the mechanism that caused both accidents, the road was not icy the morning of December 24. The County's liability for the accident must rest on notice that the road was icy for a sufficient period of time prior to the accident to allow it to act. Here, there was evidence that the road had been icy the day before, but was not again icy until shortly before this accident. That is insufficient as a matter of law to impose liability on the County.

This incident was tragic. However, the drivers knew that the road was fine shortly before this accident. The County is not responsible that the conditions changed just because the road had also been icy the previous night. The question is whether the County knew of the conditions that caused this accident. It did not.

The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Siddoway, J.