

LIABILITY OF LANDOWNER FOR OBSTRUCTIONS TO VISION

by Ted Babbitt

In Whitt v Silverman, 26 F.L.W. S281 (Fla. May 3, 2001), the Supreme Court was faced with the issue of whether a landowner operating a commercial gas station owed a duty of care to persons who might be injured as a result of the growth of landscaping on a landowner's property where that growth obstructed the vision of a motorist exiting the gas station.

Jurisdictions throughout the United States are split on the question of whether a landowner has any duty to persons injured off their premises as a result of conditions which exist on the landowner's premises. Many states have adopted the so called "agrarian rule." That rule holds that a landowner owes no duty to persons who are injured off the landowner's premises even when the injury occurs because of conditions which exist on those premises. The Restatement of Torts §363(1) and (2) makes a distinction based upon the location of the premises. The traditional "agrarian rule" is adopted by the Restatement in rural areas but not in urban areas where a landowner may be held liable when his failure to exercise reasonable care results in an unreasonable risk as a result of the condition of the vegetation on his land near a highway.

In Evans v Southern Holding Corp., 391 So.2d 231 (Fla. 3rd DCA 1980), the District Court adopted the "agrarian rule" and held that there was no duty on

the part of a landowner to maintain property free of unsafe obstructions even though a motorist might be endangered by those obstructions. A strong dissenting opinion by Judge Schwartz criticized the “agrarian rule” as one which arose long ago in conditions of a largely agricultural society and had, therefore, long outlived its reason for existence.

In Whitt, supra, the Supreme Court adopted the reasoning of Judge Schwartz and relied upon its decision in McCain v Florida Power Corp., 593 So.2d 500 (Fla. 1992). In McCain the Supreme Court focused on the applicability of the issue of foreseeability as to both duty and proximate cause. In McCain at Page 502-3, the Court held:

The duty element of negligence focuses on whether the defendant’s conduct foreseeably created a broader ‘zone of risk’ that poses a general threat of harm to others. The proximate causation element, on the other hand, is concerned with whether and to what extent the defendant’s conduct foreseeably and substantially caused the specific injury that actually occurred. In other words, the former is a minimal threshold *legal* requirement for opening the courthouse doors, whereas the latter is part of the much more specific *factual* requirement that must be proved to win the case once the courthouse doors are open. As is obvious, a defendant might be under a legal duty of care to a specific plaintiff, but still not be liable for negligence because proximate causation cannot be proven.

McCain holds that the trial court must determine whether a “zone of risk” is

foreseeable thus creating a duty to act to avoid or minimize that zone. On the other hand, whether the conduct of the defendant proximately caused the injury is almost always a question of fact for the jury to determine.

Applying the principles announced in McCain the Court concluded that there was no reasonable basis to apply a rule of strict nonliability to the issue in Whitt and instead each case must be reviewed independently to determine whether the landowner's conduct was unreasonable in light of the foreseeable consequences of the failure to act and whether that failure caused the injury.

Accordingly, we conclude that under our analysis in *McCain*, the landowners' conduct here created a foreseeable zone of risk posing a general threat of harm toward the patrons of the business as well as those pedestrians and motorists using the abutting streets and sidewalks that would reasonably be affected by the traffic flow of the business. Notwithstanding this conclusion, of course, cases like this must be subjected to a factual determination of whether the landowners actually breached their duty under the particular circumstances and whether the accidental death or injury was a proximate result of any breach of that duty. In other words, although we conclude that the landowners had a duty of care, a discrete factual analysis and determination is required to determine the landowner's alleged responsibility in each case. Whitt, supra, at 285.

Thus in cases where it is alleged that a landowner has allowed his property to become so overgrown that it has obstructed the view of motorists and

thus caused an accident, the Court must first determine whether the landowner had a duty, in light of foreseeable circumstances, and then a jury may be asked to determine whether a breach of that duty proximately caused the injury in question.

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