OHIO LIGHTNING STRIKES METAL PICNIC SHELTER IN CITY PARK

BIER v. CITY OF NEW PHILADELPHIA
11 Ohio St. 3d 134, 464 N.E.2d 147 (1984)
Supreme Court of Ohio
Decided June 13, 1984

In this case, Rosanna Bier, executor of the estate of James E. Bier Sr., sued the city of New Philadelphia and the New Philadelphia Park and Recreation Board "to recover damages resulting from the death of plaintiff's decedent [Bier] and numerous injuries suffered by the other plaintiffs when a picnic shelter which they had rented was struck by lightning." The facts of the case were as follows:

The plaintiffs had rented the shelter on August 10, 1980 for five dollars, for the purpose of having a family picnic. The shelter was located in Tuscora Park, a park operated and maintained by the city of New Philadelphia through the New Philadelphia Park and Recreation Board. The plaintiffs were enjoying a picnic at Tuscora Park when a thunderstorm approached. In an attempt to pack the supplies from the picnic before the storm struck, all the plaintiffs were either under the cover of a metal-roofed picnic shelter or beside the edge of the shelter. It was while the plaintiffs were hurriedly packing their supplies that lightning apparently struck the metal roof of the picnic shelter resulting in the death of plaintiff's decedent [Bier] and injuries sustained by the other plaintiffs.

New Philadelphia argued that "the death and injuries were the result of an act of God and the law of Ohio does not impose liability on a defendant when it is caused by an act of God." The trial court agreed and granted New Philadelphia's motion for a summary judgment. The court of appeals affirmed the trial court's determination. Bier then sought review by the Supreme Court of Ohio.

In the opinion of the appeals court, the record in this case did not support Bier's contention that New Philadelphia's alleged negligence caused injury to the plaintiff. According to the appeals court, an act of God (the lighting), rather than any negligence on the part of New Philadelphia, was the "proximate" or legal cause of the injury. In opposing the motion for summary judgment, Bier presented an affidavit from an **expert in area of lightning protection.** According to this expert, **"outdoor shelters which are not protected by a lightning protection system are attractors to lightning strikes."** In addition, the **expert maintained that "the reasonably prudent individual would be aware of the need for lightning protection systems to be installed on metal-roofed outdoor buildings that are used by the public to ensure the safety of the public."**

According to the state supreme court, **proximate cause could include the negligence of a defendant concurrent with an act of God.**

The proximate cause of a result is that which in a natural and continued sequence contributes to produce the result, without which it would not have happened. The fact that

some other cause concurred with the negligence of a defendant in producing an injury, does not relieve him from liability unless it is shown such other cause would have produced the injury independently of defendant's negligence.

While it has long been the rule of law in Ohio that a defendant cannot be held liable for an act of God which causes injury to the plaintiff, it has also long been the rule that, if proper care and diligence on a defendant's part would have avoided the act, it is not excusable as the act of God...If the negligence of the defendant concurs with the other cause of the injury [such as an act of God], in point of time and place, or otherwise so directly contributes to the plaintiff's damage that it is reasonably certain that the other cause [the act of God] alone would not have sufficed to produce it, the defendant is liable, notwithstanding he rosy not have anticipated or been bound to anticipate the interference of the superior force [in this case the lightning] which, concurring with his own negligence produced the damage.

As described by the state supreme court, a summary judgment is inappropriate "unless reasonable minds can come but to one conclusion." In addition, if "that conclusion is adverse to the party against whom the summary judgment is made, such party [in this case Bier] being entitled to have the evidence or stipulation construed most strongly in his favor." In the opinion of the state supreme court, reasonable minds could differ on evidence presented in this case.

[I]n the instant case, the **defendants [New Philadelphia] could be found liable if a trier of fact were to find the negligence of the defendants, in not installing a lightning protection system on the metal-roofed picnic shelter, is a concurrent cause of the plaintiffs' injuries.** Such a conclusion does not seem unreasonable, in view of the affidavit of plaintiffs' expert [in lightning protection]...submitted in opposition to the motion for summary judgment.

The state supreme court, therefore, reversed the summary judgment in favor of New Philadelphia and remanded the case to the trial court to fully consider Bier's allegations of negligence.

In a concurring opinion, one of the state supreme court justices found Bier had alleged facts raising those issues **necessary to support a negligence cause of action: "the duty of the city under the facts of the case [lightning protection], the breach of such duty, the nexus of the breach to the claimed effect, and the injury sustained."** The concurring justice, therefore, agreed that summary judgment was inappropriate under the facts of this case. "I cannot state that reasonable minds could come to but one conclusion."

In the present case, plaintiffs have submitted affidavits to the effect that lightning struck the picnic shelter in question. The defendants, however, submitted evidence that the lightning had not struck the shelter, but that only some damage to a roof support could be shown...

The concurring opinion provided the following description of the issues to be considered by the trial court on remand:

Here, the plaintiffs alleged that there was a duty imposed upon the city of New Philadelphia to install lightning rods or arrestors on the metal-roofed picnic shelter. As to this element, there was

an affidavit of a qualified expert submitted by plaintiffs which stated that **it is generally recognized that lightning protection devices placed upon such buildings significantly enhance public safety.** Therefore, the issue of the municipality's duty was properly raised, and there was a showing that there was no such device. Further proof, however, would be required at trial to **establish the standards for protection devices upon public shelters.** There would, of course, also have to be proof of a breach of any such duty.

Whether the installation of any lightning protection device would have avoided, or lessened, the accident remains a matter of proof. Further, if it is shown that there was a duty, and a breach thereof, the defendants may introduce evidence to prove that the damages would have occurred in spite of any preventive measures taken...All facets of the proximate cause remain for the trial upon the merits.