

## **PARK DISTRICT, UTILITY LIABILITY FOR POWER LINES OVER PLAYGROUND**

**NELSON BY TATUM v. COMMONWEALTH EDISON**

**80 Ill. Dec. 401, 465 N.E.2d 513 (1984)**

**Appellate Court of Illinois, Second District, May 4, 1984**

In this case, Linda Tatum brought suit on behalf of her son, Warren Nelson, after the boy was electrocuted on a public playground. The circumstances surrounding the accident were as follows:

On October 14, 1981, Warren Nelson, a ten-year-old boy, was playing in Sabrooke. Playground in Rockford, Illinois. High voltage electrical power lines run in an east-west direction over the middle of the park and are at least thirty feet high. The park land is owned by Commonwealth Edison but leased and controlled by the Rockford Park District. Young Nelson, either by himself or with a playmate, apparently had discovered a piece or spool of copper wire and one of the youths tossed it high into the air while Nelson held on to one end of the wire. An electric current either arced from nearby power lines to the copper wire or the wire actually contacted the power lines, causing plaintiff [Nelson] to receive serious electrical burns.

In her complaint, Tatum alleged that defendants Commonwealth Edison and the Rockford Park District were negligent because "defendants knew that children habitually frequented the Sabrooke Playground, that the park was directly underneath electrical power transmission lines, and that said power lines constituted a dangerous condition." Further, Tatum argued that a young child would not appreciate the danger posed by the power lines. Consequently, Tatum maintained defendants had a duty to remedy this dangerous condition or otherwise take necessary steps to protect children using the playground. According to Tatum, "the cost of providing warning signs was slight when compared to the risk of injury to young children."

Given the height of the power lines (thirty feet), the trial judge concluded that "it was not reasonably foreseeable that a child would throw a heavy copper wire spool close enough to the park's elevated power lines to cause injury."

[T]he trial judge stated in substance that where property was set aside as a public playground the Park District and the utility company would be held to recognize that certain rights for children exist in the use of the premises that are far greater than would be permitted in other areas not so set aside...[I]t would be reasonably foreseeable that a child might do something that would involve activity off the ground such as flying a kite or model aircraft tethered with a control wire, without appreciating the danger of such activity.

The trial court concluded, however, that throwing a wire in the air was not like throwing a football or baseball, and found that it was not reasonably foreseeable that a child of relatively tender years would throw a wire 30 feet or more in the air.

Having determined that "the occurrence itself was unforeseeable," the trial judge found "the defendants had not assumed the type of unforeseeable risk for which liability would attach." The trial court, therefore, granted defendants motion to dismiss the suit; Tatum appealed.

**On appeal, Tatum claimed "the trial court misunderstood the requirements of proximate [or legal] cause by finding that it was necessary that the exact method or precise manner in which the injury occurred be reasonably foreseeable. According to Tatum, "the 'foreseeability' requirement does not refer to the method of injury." On the contrary, Tatum argued that "as long as the resulting event was foreseeable [electrocution], the manner in which it occurred [throwing a wire spool] was irrelevant."**

According to the appeals court, the issue in this case was "whether Warren Nelson's electrical injuries were so unforeseeable an occurrence that the trial court could properly conclude that the defendants owed him no legal duty of protection."

Warren Nelson was injured in a public playground, where defendants should have reasonably anticipated both the presence of children and their innumerable playtime activities; no express notice is necessary where these objective facts suffice to put a defendant on notice of plaintiff's proximity to the electrical wires. Young Nelson was rightfully in a public area which was designated as a playground for children of all ages.

If defendant Edison chose to continue its dangerous activities such as the transmission of high voltage electricity in close proximity to an area which they have leased to a park district, it must be charged with a duty of protection commensurate with the risks involved. Because of the nature of the electrical business and highly charged wires, an electric utility company owes a duty to see that such wires are properly placed and/or properly insulated where the conditions and circumstances indicate that persons might come into reasonable proximity to those wires. Similarly, the defendant Park District owed a duty to the public and the plaintiff not to operate a public park under these circumstances.

According to the appeals court, "the facts of the instant case require only a limited holding that the erection, maintenance, and placement of high voltage electrical wires in public playgrounds, power companies and land occupiers are charged with a duty to provide safe air space.

Considering the height, location, and voltage of the wires, there was clearly some chance of contact with them and the resulting injury from any such contact would inevitably be severe. Second, the magnitude of defendants' burden in reducing the risk of electrocution or injury is not as onerous as defendants imply...It is not such a great burden for the defendants to insure that high voltage electrical wires in the open area of a public playground - an area in which children have been tacitly invited to use the air space - are either insulated, placed underground, or redirected around such air spaces. Finally, while preventive measures would necessarily result in some economic and social impact, the aforementioned alternatives available to the defendants would not create undue costs or problems.

The appeals court, therefore, reversed the dismissal of Tatum's claim and remanded the case to the trial court for further proceedings consistent with this opinion.