

POWERLINES KNOWN DANGER IN HOT AIR BALLOON MISHAP

**COLEMAN v. WINDY CITY BALLOON PORT, LTD.
160 Ill.App.3d 408, 513 N.E.2d 506, 112 Ill.Dec. 92 (1987)
Appellate Court of Illinois, Second District
August 31, 1987**

In this case, plaintiff Deborah Coleman (representing the estate of Kenneth Coleman, Jr.) brought a wrongful death claim against defendants Commonwealth Edison and Windy City Balloon Port following a hot air balloon accident. The facts of the case were as follows:

The incident occurred on August 15, 1981, near Northwest Highway (Route 14) in Barrington Hills, Illinois. The balloon was carrying six passengers [including Kenneth Coleman, Jr.]. The balloon contacted defendant Commonwealth Edison's electrical power lines, ignited and crashed. Except for one passenger (Harry Evans) who jumped from the balloon, all aboard perished, including the balloon pilot, James A. Bickett...

[Coleman offered deposition testimony] to establish Commonwealth Edison's knowledge and "active interest" in ballooning activity in that it "participated in seminars on ballooning and power lines," presented slide shows "regarding powerline contact with balloons," "billed balloonists for damages caused to its wires," and that the local Commonwealth district manager knew about a balloon/wire accident which occurred before the accident at issue. The deposition [i.e. out of court sworn testimony] references also purported to establish that Commonwealth Edison "regularly insulates wires in areas where contact may occur with trees"; that insulation types vary depending on location, use and the elements being insulated; and that circuit breakers and cutoff fuses were installed in certain areas... [and that] wire-marking warning devices are available.

[Commonwealth Edison submitted deposition testimony indicating] that the collision occurred about 1 1/2 miles from the balloon port; that some power lines are insulated by air space; that at the time of the accident, a storm was approaching from the Rockford area with wind velocities up to 37 miles per hour in the vicinity where the balloon collided with the power lines near a parking lot; that Dean Stellas, owner of the Windy City Balloon Port and an experienced balloon pilot, believed that the accident was caused by weather conditions and pilot error, specifically, a timing problem and an optical illusion; that Commonwealth Edison does provide weatherproofing of its lines in areas of dense tree cover, but the purpose of it is to prevent damage to the lines; that Commonwealth Edison did in fact provide circuit breakers on the power line in question; and that when Commonwealth Edison personnel arrived at the scene, the line was "locked out, tripped off, in other words."

Further excerpts [from depositions] showed: that the balloon pilot, Jamie Bickett, was acutely aware of the location of power lines and that he and other pilots used the power lines along Route 14 as a reference point; that the balloon pilots at the port, including Jamie Bickett, were aware of the danger of contacting the power lines; that balloon pilots are specifically taught to avoid power lines because contact could be disastrous; that it was the understanding of one of the hot air balloonists who witnessed the accident that contact with power lines meant "no chance of

survival," and... that Commonwealth Edison does not have and has never had a program specifically designed to address the issues of electrical safety and avoidance of its overhead facilities as they relate to the sport of hot air ballooning.

Prior to trial, Coleman's claim against defendant Windy City Balloon Port, Ltd. (the hired carrier from which port the balloon took off) was dismissed. In the remaining claim against defendant Commonwealth Edison, Coleman alleged that "Commonwealth Edison was negligent in its maintenance and installation of the power lines in that it (1) located power lines in an area trafficked by hot air balloons without adequate signs, lights or other warnings to enable balloonists to avoid said lines; (2) did not insulate the power lines in order to protect anyone who came in contact with them; and (3) did not install on the power lines circuits or other devices which would cut off the flow of electricity when the lines were severed." In response to these allegations, Commonwealth Edison contended that "the power lines in question were open, obvious, and clearly visible even to lay persons." Further, Commonwealth Edison indicated that "the power lines were installed in accordance with the applicable Illinois Commerce Commission rules and regulations prescribing minimum height requirements for power lines."

Based upon the undisputed pretrial evidence in this case, the trial court found that Coleman had failed to raise sufficient facts to establish a negligence claim against Commonwealth Edison. Specifically, the trial court found that "the danger of electricity was common knowledge and that there is no duty to warn against a known danger where the presence of the power lines was an open and obvious and, therefore, a known danger." Under the circumstances of this case, the trial court concluded that Commonwealth Edison could not have reasonably foreseen that "an air balloon would be operated in severe weather causing the balloonist to misguide it and crash into the power line." Further, the trial court found requiring Commonwealth Edison "to have insulated the power line, to have provided circuit breakers, or to have warned balloonists" at the site of the crash would "be tantamount to imposing on Commonwealth Edison Company the duty to perform those tasks throughout the entire system." As a result, the trial court granted Commonwealth Edison's motion for summary judgment. Coleman appealed.

On appeal, Coleman argued that "Commonwealth Edison still had a duty to warn... even if the power lines were a known danger." As noted by the appeals court, Commonwealth Edison owed the following legal duty of care to Coleman under the circumstances of this case:

Electricity is a silent, deadly and instantaneous force, and one who uses it for profit is bound to exercise care corresponding to the dangers incident to its use. One duty is the insulation of its wires, but that duty does not extend to the entire system. From the very nature of its business, an electric company using highly charged wires owes the legal duty toward every person who, in the exercise of a lawful occupation in a place where he has a legal right to be, whether for business, pleasure or convenience, is liable to come in contact with the wires to see that such wires are properly placed with reference to the safety of such persons and are properly insulated.

According to Coleman, "the issue of whether Route 14 is an area where people are liable to come in contact with the wires" was a question of fact. As a result, Coleman argued that the trial court should have submitted this issue to a jury for resolution and not dismissed allegations of

negligence on a motion for summary judgment. Consequently, Coleman argued that summary judgment, dismissing the case prior to consideration by a jury, was inappropriate. The appeals court disagreed.

In granting summary judgment to Commonwealth Edison, the appeals court found that the trial court had correctly resolved the legal duty issue against Coleman. Given the facts in this case, the appeals court found the trial court could reasonably conclude that the area where the hot air balloon crashed was not "an area where people are liable to come in contact with the wires." Coleman had argued that "the foreseeability of the likelihood of contact with the wires was solely a fact question for the jury." However, in the opinion of the appeals court, there was sufficient evidence in this case for the trial to find that the unforeseeable nature of the accident established Commonwealth Edison's "lack of legal duty."

In order for a legal duty to exist upon which to predicate liability, the occurrence must be reasonably foreseeable... Not what actually happened, but what the reasonably prudent person would then have foreseen as likely to happen, is the key to the question of reasonableness. In judging whether harm was legally foreseeable we consider what was apparent to the defendant at the time of his now complained of conduct, not what may appear through exercise of hindsight.

In addition to the factor of foreseeability, the judges' function in a duty determination involves complex considerations of legal and social policies which will directly affect the essential determination of the limits to government protection. The imposition and scope of a legal duty involves other considerations including the magnitude of the risk involved in the defendant's conduct, the burden of requiring defendant to guard against that risk, and the consequences of placing that burden upon the defendant.

The appeals court acknowledged that appellate courts should refuse to reverse a trial court's summary judgment unless "a genuine issue of material fact does exist and that the moving party [in this case Commonwealth Edison] is not entitled to judgment as a matter of law." Further, the appeals court found that "foreseeability is also a part of the [trial] court's duty determination, which is a question of law [for the trial judge, not necessarily the jury, to determine]." Having found that "no genuine issue of material fact existed" in this case, the appeals court affirmed the judgment in favor of defendant Commonwealth Edison.