

April 2, 2008

Garcia v Paramount Citrus Association

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Landowner Duty; Sliding-scale balancing formula

Andrade was a crew supervisor for a farm labor contractor in Tulare County. He delivered a forklift to a worksite he had not previously visited. He left for a second worksite, taking a road he had never used before. The road was dirt, but well-oiled, and he accelerated to a cruising speed of 35 mph, towing the empty trailer. The road traveled for some distance through groves of trees.

Andrade did not realize he was fast approaching Road 172, a paved roadway which intersected the dirt farm road. A cable was normally pulled across the road to prevent ingress and egress, but was not in place the morning of the accident. Without slowing appreciably, Andrade rammed a van full of farm workers, including plaintiff in this action, which had been traveling at 50 mph on Road 172, causing the van to roll over. Plaintiff suffered brain damage and was rendered a paraplegic.

Plaintiff sued several parties, including the defendant Paramount Citrus, alleging the landowner **owed him a duty** to place a warning sign on its private farm road alerting drivers to the approaching intersection with a public road. The defendant landowner's summary judgment was denied, and the case went to jury trial. Defendant was found 35% responsible for plaintiff's injuries, and judgment was entered against it for \$1,637,226.00. Defendant then appealed.

Paramount Citrus claimed it had no duty to plaintiff. The Fifth DCA cited **Rowland v Christian** (1968) 69 Cal. 2d 108, noting a **landowner has a duty to act reasonably in the management of property in view of the probability of injury to others**. In determining whether a duty should be imposed in a particular case, a court must consider the following **factors** in the circumstances of the case:

1. The **foreseeability of harm** to the injured party,
2. The degree of certainty that party has suffered injury,
3. The closeness of the connection between the condition of the property and the injury,
4. The moral blame attached to the landowner's conduct,
5. The policy of preventing future harm,
6. The **extent of the burden the duty would impose** compared to the benefit to the community from imposing the burden,
7. The practical availability of insurance for the risk involved.

The Supreme Court recently quoted with approval the following description of the way a court should approach the **duty analysis**:

1. The court must determine the **specific measures** the plaintiff asserts the defendant should have taken to prevent the harm. This defines the scope of the duty under consideration.

2. The court must analyze **how financially and socially burdensome** these proposed measures would be to a landlord.

3. The court must **identify the nature of the third party conduct** that the plaintiff claims could have been prevented had the landlord taken the proposed measures and **assess how foreseeable** it was that this conduct would occur.

4. Once the **burden and foreseeability** have been independently assessed, they can be compared (**balanced**) in determining the scope of the duty the court imposes on a given defendant. The more certain the likelihood of the harm, the higher the burden a court will impose on a landlord to prevent it. (**Castaneda v Olsner** (2007) 41 Cal. 4th 1205)

Specific Measures:

Here plaintiff did not assert specific preventative measures to be taken by the rural landowner. The Appellate Justices inferred the assertion that a stop sign should be placed on a private road intersecting with a public road. Thus the duty sought to be imposed could not be narrowly confined to the present case, but would be a duty broadly applicable in rural areas. Plaintiff claimed such a duty was already recognized by the farming community.

The Financial and Social Burden:

The Justices noted such a duty would require every owner of such property to inspect every road on their property to determine whether the view of an intersection is obscured from some vantage point an undefined distance from the public road. Thus, a high burden would be imposed by this asserted duty.

Nature and Foreseeability of Conduct:

The general nature of the danger presented is that a driver unfamiliar with the road, traveling at an excessive speed, would not have time to stop if the driver failed to see the intersecting public road. Here, the dirt road in question was normally blocked with a cable, and was not previously known to have been used as a shortcut. Although possible, use of this road by one unfamiliar with it was not reasonably likely. Further, most users of farm roads bounded by tree rows could be expected to drive cautiously because of visual impairments.

Balance of Burden and Foreseeability:

The Fifth DCA used a "sliding-scale balancing formula" under which imposition of a high burden requires heightened foreseeability, but a minimal burden may be imposed upon a showing of a lesser degree of foreseeability. (*Delgado v Trax Bar & Grill* (2005) 36 Cal. 4th 224)

Here, the burden sought to be imposed was high. The requirements imposed on the landowner were numerous, and potentially expensive. Weighed against the burden is the low foreseeability of this type of conduct. The evidence did not permit an inference the defendant knew or should have known members of the public were using its roads when the barriers were down, nor that they were speeding while doing so.

Thus, the foreseeability did not outweigh the high burden the proposed duty would place upon rural landowners to prevent such conduct. Since none of the remaining **Rowland** factors were significant, the Appellate Court reversed the judgment.

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