UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 8 | Number 4 Article 26

6-1-1930

Torts -- Negligence -- Liability of Power Company for Suspending Service

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Torts—Negligence—Liability of Power Company for Suspending Service

Plaintiff was undergoing a Caesarian operation at night in a hospital to which defendant company furnished electricity. The surgeon, with plaintiff's consent, was to remove the plaintiff's appendix at the same operation. After the child was delivered, but before the appendix was removed, the defendant company negligently allowed the lights to fail, causing a delay in the operation until flashlights could be procured and the wound closed. The appendix was not removed. The plaintiff was occasioned a great loss of blood, resulting in a weakened condition and physical suffering, and she has since been suffering from the diseased appendix. *Held:* the demurrer to the complaint should have been sustained.[1]

The decision in the instant case was based on a decision wherein the complaint alleged that by reason of the defendant's negligence in failing to deliver a message, the plaintiff was forced to give birth to a child without medical aid, thereby causing her great physical pain and suffering, and permanent impairment of health.[2] In refusing relief, the court relied on *Seifert v. Western Union Teleg. Co.*,[3] which was based on an analogous situation and in which it was alleged that defendant's negligence caused plaintiff nineteen hours of most intense suffering, retarded recovery, and brought on an illness from which plaintiff still suffered. The court, in the Seifert case, held that it was bound by the decision in *Chapman v. Western Union Teleg. Co.*[4] This case was the usual mental anguish case involving the negligence of the defendant in failing to deliver a death message promptly. The court decided not to allow recovery for mental anguish, and concluded: "There was no error in sustaining the demurrer to so much of the plaintiff's petition as sought recovery, simply for pain and anguish of mind." The court in the Seifert case indulged in a remarkable process of reasoning to bring the decision under the Chapman case.[5] It is submitted that the instant

[1] Ga. Power and Light Co. v. Haskins, 151 S. E. 668 (Ga. 1930).
[2] So. Bell T. & T. Co. v. Reynolds, 139 Ga. 385, 77 S. E. 388 (1913).
[3] 129 Ga. 181, 58 S. E. 699, 11 L. R. A. (N. S.) 1149 (1907).
[4] 88 Ga. 763, 15 S. E. 901, 17 L. R. A. 430 (1892).
[5] The court reasoned that since all physical suffering is accompanied by more or less mental suffering, and there can be no recovery for mental suffering, then physical suffering is on the same footing with mental suffering and cannot be a basis for recovery. The court also reasoned that plaintiff's suffering was not the natural and proximate result of defendant's negligence because it " would have been brought about if there had been no telegraph company and no message."

case is based upon an erroneous line of decisions.[6] The Georgia court is leaning over backward in its antagonism to mental anguish as a basis for recovery.

In the principal case the plaintiff probably would not have been allowed to recover on the merits. Admitting that the defendant's negligence was a substantial factor in producing injury to an interest of the plaintiff which the law recognizes and protects, *i.e.*, prolongation of physical suffering and resultant injury, it is extremely doubtful whether any court would extend the rule of law invoked by the plaintiff to cover the particular hazard involved.[7] An analogous line of cases is that in which a citizen sues a water company, under contract to the city to keep a sufficient supply of water on hand to fight fires, for damages to property proximately caused by the breach of that duty. It seems that only North Carolina,[8] Kentucky,[9] and Florida[10] have allowed recovery in such cases, while decisions to the contrary are numerous.[11] The instant case is more closely analogous to the situation in *Stroup v. Alabama Power Co.*,[12] where a

[6] Independent of the basis on which the Seifert case was decided, the holding is in the minority. The following cases are *contra:* Western Union Teleg. Co. v. Church, 90 N. W. 878, 57 L. R. A. 905 (Neb. 1902); Western Union Teleg. Co. v. Cooper, 71 Tex. 507, 98 S. W. 598 (1888); Carter v. Western Union Teleg. Co., 141 N. C. 374, 54 S. E. 274 (1906); Thompson v. Western Union Teleg. Co., 107 N. C. 449, 12 S. E. 427 (1890), where the message was to notify the husband of the feme plaintiff who was about to be confined; Western Union Teleg. Co. v. McCall, 9 Kan. App. 886, 58 Pac. 797 (1899); Western Union Teleg. Co. v. Morris, 28 C. C. A. 56, 83 Fed. 992 (C. C. A. 8th, 1897). In McNeal v. Seaboard Air Line Ry. Co., 23 Ga. App. 473, 98 S. E. 409 (1919), the Seifert case is cited in denying recovery for mental anguish. It is cited again in Hendricks v. Jones, 28 Ga. App. 383, 111 S. E. 81 (1922), denying recovery for injury received through defendant's negligence in failing to properly light the stairway, but the court also intimates that plaintiff was guilty of contributory negligence. See also Western Union Teleg. Co. v. Knight, 16 Ga. App. 203, 84 S. E. 986 (1915).

[7] This is according to the analysis of GREEN, RATIONALE OF PROXIMATE CAUSE (1927). And see also (1928) *The Duty Problem in Negligence Cases,* 28 COL. L. REV. 1014, by the same author.

[8] The leading case in North Carolina is Gorrell v. Water Co., 124 N. C. 328, 32 S. E. 720, 46 L. R. A. 513 (1899). See also Morton v. Washington Light and Water Co., 168 N. C. 582, 84 S. E. 1019 (1915), which lists the cases decided since, and adhering to, the Gorrell case.

[9] Paducah Lumber Co. v. Paducah Water Supply Co., 89 Ky. 340, 12 S. W. 554, 7 L. R. A. 77 (1889); Lexington Hydraulic and Mfg. Co. v. Oots, 19 Ky. 598, 84 S. W. 774 (1905); Graves County Water and Light Co. v. Ligon, 112 Ky. 775, 66 S. W. 725 (1902).

[10] Mugge v. Tampa Waterworks Co., 52 Fla. 371, 42 So. 81, 6 L. R. A. (N. S.) 1171 (1906); Woodbury v. Tampa Waterworks Co., 57 Fla. 249, 49 So. 556 (1909).

[11] See cases collected in Hone v. Presque Isle Water Co., 104 Me. 217, 71 Atl. 769 (1908) and Note (1909) 21 L. R. A. (N. S.) 1021.

[12] 216 Ala. 290, 113 So. 18 (1927).

demurrer was sustained to a count alleging that feme plaintiff was being treated in her home by a physician about 2 a.m. when the electric current was cut off, so that the physician was unable to assist her, to her damage, and that defendant could have notified her of its intention to suspend the service by the exercise of reasonable care and diligence.

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Torts—Negligence—Proximate Cause

The plaintiff, an engineer on the defendant's railway, was scalded by a steam plug being blown from the engine boiler and was forced to jump from his cab. He landed between the rails of an adjacent track, suffering a broken leg and other severe injuries. While thus incapacitated, and before aid could reach him, he was further terrified by the approach of an engine upon the track on which he lay. Also, he heard other employees shouting "Stop 67!", which increased his fear of immediate death. The engine was stopped only a few feet from the plaintiff. Plaintiff sued for damages because of physical injuries and nervous shock, and recovered on both counts. The decision was affirmed.[1]

The unique feature of the case is that damages were allowed for nervous shock which occurred subsequent to the physical injury. The negligent omission, the physical injury, and the nervous shock, occurred in sequence. In allowing a recovery for nervous shock, the court treats it as proximately caused by the same negligence that caused the physical injury, and said that each forms a part of the natural and indivisible result.[2] From the reported facts, it appears that the real cause of the nervous shock was the approach of "67" and the shouts of the spectators.

The decision of the case is to be recognized as an extension of the recovery for nervous shock. There are yet states that require an actual impact, causing a contemporaneous nervous injury, and a subsequent physical injury, to permit a recovery for fright.[3] Others have recognized that such an impact, however slight, is a mere legal peg[4] upon which to hang a recovery when there is a nervous shock

[1] Baltimore & O. R. Co. v. McBride, 36 F. (2d) 841 (C. C. A. 6th, 1930).
[2] *Supra* note 1 at 842.
[3] Mitchell v. Rochester R. Co., 151 N. Y. 107, 45 N. E. 354, 34 L. R. A. 731 (1896) (Court is afraid of: (1) Fictitious and fraudulent litigation; (2) Difficulty of ascertaining damages; (3) Recovery against public policy). Spade v. Lynn & Boston R. Co., 168 Mass. 285, 47 N. E. 88 (1897).
[4] Throckmorton, *Damages for Fright* (1921) 34 HARV. L. REV. 260, 273.