Buffalo Law Review

Volume 6 | Number 2 Article 71

1-1-1957

Torts—Duty to Warn of Road Hazards

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instructed that the condition of the scaffolding could have constituted adequate warning.[55]

It is a general rule that an employer is under a duty to exercise reasonable care to provide his employees with a safe place to work, and such duty extends to the employees of a subcontractor.[56] Such duty of reasonable care includes the giving of a notice or warning where the person under a duty to give it knows or by the exercise of reasonable care could discover the dangerous condition,[57] but there is no duty to warn where the dangerous condition is obvious.[58]

It is not quite clear from the decision in the instant case whether the Court felt that the jury could find that there was no duty to give a warning, or that the condition of the scaffolding was so obvious that anyone attempting to use it would be guilty of contributory negligence. Either finding would completely preclude any recovery.

Duty to Warn of Road Hazards

The plaintiff was injured in an accident occuring upon a county highway immediately after leaving a state highway. A sign on the state road indicated a cut-off, but gave no warning of the dangerous condition on the county highway. The Court of Appeals, reversing the Appellate Division,[59] *held* that the road signs were adequate and therefore the State could not be held liable.[60] The Court noted that there is no requirement that old signs conform to the new Manual of Uniform Traffic Control Devices,[61] provided they are otherwise adequate to warn of the danger.

The State has a duty to warn of the hazards existing on highways maintained by it;[62] in the instant case the hazard was found to exist on the county highway. The case of *Barna v. State*[63] should not be read as extending such duty to hazards not on state highways. In that case the accident happened on a bridge which,

55. *Cosby v. City of Rochester*, 1 N. Y. 2d 396, 135 N. E. 2d 706 (1956).
56. *Costa v. Colonial Ice Co.*, —Misc.—, 124 N. Y. S. 2d 103 (Sup. Ct. 1953); *Semanchuk v. Fifth Ave. & 37th Street Corp.*, 290 N. Y. 412, 49 N. E. 2d 307 (1942).
57. *Haeferli v. Woodrich Engineering Co.*, 255 N. Y. 442, 175 N. E. 123 (1931).
58. *McLeon v. Studebaker Bros. Co. of New York*, 221 N. Y. 475, 117 N. E. 951 (1915).
59. *McDevitt v. State*, 286 App. Div. 665, 146 N. Y. S. 2d 317 (3d Dep't 1955).
60. *McDevitt v. State*, 1 N. Y. 2d 540, 136 N. E. 2d 845 (1956).
61. 1948 N. Y. OFFICIAL COMPILATION OF CODES RULES AND REGULATIONS 4th OFF. CUM. SUPP. 1127 [E]xisting signals and markings now in place on or along the state highway maintained by the state, may be continued in use until no longer serviceable, at which time they may be replaced by signs, signals or markings conforming to the standards set forth in the manual.
62. *Canepa v. State*, 306 N. Y. 272, 117 N. E. 2d 550 (1954).
63. 293 N. Y. 877, 59 N. E. 2d 784 (1944).

though not state-maintained, connected two state highways thus forming a continuous highway over which its users had to pass.

However, even where there is a duty to warn, a breach thereof will not automatically result in liability in the absence of proof that such breach was the proximate cause of the accident.[64] It is not clear from the decision whether a contrary finding, that the signs were inadequate to give a warning of the cut-off, would have resulted in a finding that such inadequacy was the proximate cause of the accident. The decision may merely indicate that since the signs were adequate there was no necessity to decide the question of proximate cause, and that such latter question would have to be decided on a case by case basis. It is submitted by the writer that in view of the immediacy of the hazard to the cut-off, the Court would have found proximate cause.

MISCELLANEOUS

Attorneys—Disbarment

In the case of *In Re Ginsberg*,[1] the Court held (5-1) that an attorney, upon conviction of a felony, is automatically disbarred even in the absence of entry of any order of disbarment. The situation here was novel, since no one saw to it that the attorney's name was stricken from the roll of attorneys and his conviction was subsequently reversed and a new trial ordered.

The wording of the statute[2] and the policy behind it make it evident that the disbarment is automatic upon conviction and that the provision for the removal of the attorney's name from the roll is no more than a formal recording of the existing fact of disbarment. There is no discretion in the court in such a case.[3] If the order had been entered before reversal and the indictment dismissed, the attorney would not be ipso facto entitled to reinstatement but rather it would merely open the door for an application for reinstatement.[4] The result should be no different in the instant case. In assuming the responsibilities of an officer of

64. *Nuss v. State*, 301 N. Y. 768, 95 N. E. 2d 822 (1950).

1. 1 N. Y. 2d 144, 134 N. E. 2d 193 (1956).

2. N. Y. JUDICIARY LAW §90(4). Any person being an attorney and counsellor-at-law, who shall be convicted of a felony, shall, upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

Whenever such attorney and counsellor-at-law shall be convicted of a felony, there may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be struck from the roll of attorneys.

3. *Matter of Donegan*, 282 N. Y. 285, 26 N. E. 2d 260 (1940); *In Re Scotti*, 266 App. Div. 279, 42 N. Y. S. 2d 234 (1st Dep't 1943).

4. *In Re Stein*, 249 App. Div. 382, 292 N. Y. Supp. 828 (1st Dep't 1937).