

12-28-2011

Woodworth v. State Ex Rel. Id. Transp. Bd. Respondent's Brief Dckt. 38884

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IN THE SUPREME COURT OF THE STATE OF IDAHO

SUPREME COURT NO. 38884-2011

BRIAN WOODWORTH,)
)
)
Plaintiffs/Appellant,)
)
vs.)
)
)
STATE OF IDAHO, BY AND THROUGH)
ITS IDAHO TRANSPORTATION BOARD AND)
IDAHO TRANSPORTATION DEPARTMENT)
)
Defendant/Respondent.)
_____)

RESPONDENTS' BRIEF

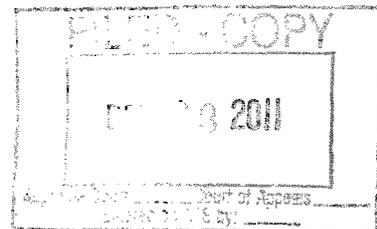
Appeal from the District Court of the Third Judicial District
for the County of Canyon
Case No. CV 2009-11334

Honorable Bradley S. Ford, District Judge

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ATTORNEY FOR RESPONDENTS

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I.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This appeal raises several questions concerning the District Court's Memorandum Decision and Order on Defendants' Motions for Summary Judgment that granted summary judgment in favor of the State of Idaho, by and through the Idaho Transportation Board ("ITB") and Idaho Transportation Department ("ITD" and sometimes hereinafter collectively the "State"), and dismissed the Appellant's Complaint.

B. COURSE OF THE PROCEEDINGS BELOW

This lawsuit commenced on October 27, 2009, when the Appellant Brian Woodworth (sometimes hereinafter "Woodworth" or "Appellant") filed a Complaint for damages arising from an accident that occurred on October 29, 2007, during which a non-party motorist hit and injured the Appellant. *See R.* at 2-5. The Complaint named the State and the City of Nampa ("Nampa") as defendants and alleged negligence causes of action. *See R.* at 5-20. The State filed its Answer on December 23, 2009; Nampa file its Answer on January 25, 2010. *See R.* at 21-7 & 28-39. Thereafter, the parties engaged in discovery.

The State and Nampa filed Motions for Summary Judgment and supporting memoranda on February 10, 2011. *See R.* at 40-2; 78-83; 84-6 & 113-122. In support of its Motion for Summary Judgment, the State submitted the Affidavit of Kevin Sablan and an Affidavit of Counsel. *See R.*

at 123-133 & 87-112. Notably, the Affidavit of Kevin Sablan states that the construction plans for the construction of the intersection at which the Appellant was injured, ITD Plan 3B29 for Federal Aid Project, Project No. U03281(3) ("Plan 3B29") was prepared in or around 1954, and believed to be the most recent construction plans for the intersection at issue here, as well as the adjacent area. *See R.*, at 124.

Nampa filed the Affidavit of Kent Fugal in support of its Motion for Summary Judgment. *See R.* at 43-77. Mr. Fugal's affidavit unequivocally states that Plan 3B29 was prepared in substantial conformance with the existing engineering or design standards in effect at the time of preparation. *See R.*, at 53.

The Appellant filed an Opposition, as well as an Affidavit of Counsel and the Affidavit of Edward Stevens. *See R.* at 142-182; 185-177 & 278-299. The State and Nampa filed Replies on March 3, 2011. *See R.* at 308-14 & 300-07. The Trial Court held oral argument on the two Motions for Summary Judgment on March 10, 2011. *See R.* at 315-16. The State and Nampa filed supplemental memoranda on March 14, 2011 and March 15, 2011, respectively, to address a Washington appellate case that Appellant relied upon at the oral argument. *See R.* at 317-21 & 322-26.

On April 21, 2011, the Trial Court filed its Memorandum Decision and Order on Defendants' Motions for Summary Judgment, granting summary judgment in favor of the State and Nampa. *See R.* at 327-349. The Trial Court entered a Judgment and Supplemental Judgment in favor of the State

on April 29, 2011 and August 2, 2011, respectively. *See R.*, at 352-54 & 366-67. The Appellant filed a Notice of Appeal on June 9, 2011. *See R.*, at 355-63.

C. STATEMENT OF FACTS

The Appellant alleges that Nampa and the State negligently failed to locate, design, construct, install and maintain for public convenience and safety that portion of the state highway system known as Eleventh Avenue North and, more particularly, the intersection of Eleventh Avenue North with Third Street North (hereinafter the “Intersection”). *See, e.g., R.*, at 8. 11th Avenue North has a total of five lanes of traffic: two northbound lanes, two southbound lanes and a middle turn lane. *See R.*, at 328-29. The portion of 11th Avenue North on which the accident occurred is part of U.S. 30. *See R.*, at 328-29.

Before the accident, on the evening of October 29, 2007, Woodworth was shopping in Paul’s Market, a business across from Intersection. *See R.*, at 6. As alleged in his Complaint, if a person leaving Paul’s Market intends to cross the street at a marked crosswalk, he or she must walk one block in either direction. *See R.*, at 4. Appellant alleges that patrons regularly forego walking one block in either direction and instead cross directly in front of Paul’s Market, where there is no marked crosswalk. *See R.*, at 4. It is undisputed in this case that the Appellant left Paul’s Market pushing a shopping cart and crossed 11th Avenue North at the Intersection. *See R.*, at 6. While crossing at approximately 7:30 p.m., Appellant was struck by a vehicle driven by a non-party and was injured. *See R.*, at 6-7.

D. STANDARD OF REVIEW

On appeal from the grant of summary judgment, the reviewing court applies the same standard as that which was applied by the District Court in granting summary judgment. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008).

Summary judgment is appropriate if “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. I.R.C.P. 56(c).

II.

RESPONDENTS’ RESTATEMENT OF THE ISSUES THAT HAVE BEEN PRESENTED ON APPEAL BY THE APPELLANT

1. Did the Trial Court correctly rule that Idaho Code § 6-904(7) applied to and provided governmental immunity to the State from the Plaintiff’s causes of action?
2. Did the Trial Court correctly find that the State’s Highway Accident Location (HAL) program likely fulfilled any duties owed pursuant to Idaho Code § 40-210?
3. Did the Trial Court correctly find that the Appellant did not raise a genuine issue of material fact as to whether the State complied with HAL, or otherwise was negligent?

III.

ARGUMENT

In its Motion for Summary Judgment, the State contended that it was entitled to immunity from Appellant’s claims pursuant to Idaho Code 6-904(7) because the highway at issue was engineered and designed in accordance with the standards at the time, and approved in advance of

construction. Furthermore, the State's monitoring program in place at the time assembling accident data for the Intersection and surrounding intersections indicated no deviation from any standard, which would require affirmative action on the part of the State.

The Trial Court correctly granted summary judgment in favor of the State on these two grounds. First, the Trial Court properly ruled that the State was immune from the Appellant's claims pursuant to Idaho Code § 6-904(7). Second, the Trial Court properly found that, even if the State was not entitled to immunity under Idaho Code § 6-904(7), it likely discharged any statutory duties it owed. Furthermore, the Court reasoned that, in any event, the Appellant did not controvert the State's material facts on the issue of breach of duty.

A. The Trial Court Correctly Ruled that Idaho Code § 6-904(7) Applied to and Provided Governmental Immunity From Appellant's Causes of Action.

The Appellant contends that the Trial Court committed reversible error when it found that Idaho Code § 6-904(7) applied to and immunized the State from the Appellant's causes of action. In support of this argument, the Appellant argues that Idaho Code § 6-904(7) does not apply because his causes of action do not "arise" out of the design of the crosswalk. Instead, the gist of the Appellant's claims, so the argument goes, is that the State is liable for failing to inspect for dangerous conditions at the crosswalk, and correct them. The argument fails because it mischaracterizes the Appellant's own causes of action and, as a result, mistakenly asserts that Idaho Code § 6-904(7) is not on point.

Idaho Code § 6-904(7) is an immunity statute, which states in pertinent part:

6-904. EXCEPTIONS TO GOVERNMENTAL LIABILITY. A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent shall not be liable for any claim which:

* * * *

7. Arises out of a plan or design for construction or improvement to the highways, roads, streets, bridges, or other public property where such plan or design is prepared in substantial conformance with engineering or design standards in effect at the time of preparation of the plan or design or approved in advance of the construction by the legislative body of the governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval.

In determining whether this provision applies, the threshold issue is whether the claims arise out of the “plan or design for the construction or improvement” of a state highway.

Here, despite Appellant’s tortuous attempts to persuade otherwise, the ineluctable fact is that his causes of action arise out of the “plan or design for the construction or improvement” of a state highway. Consider the following allegations contained in the Complaint:

- The Intersection had “poor lighting” and lacked a “marked crosswalk or traffic warning signals. *See R.*, at 4.
- The Intersection “lacked traffic control devices, warnings or markings.” *See R.*, at 4.
- As of the date of accident giving rise to the Complaint, the Intersection “still had no traffic control devices, warnings or markings *designed* to benefit the safety of pedestrians” The Intersection “lacked traffic control devices, warnings or

markings.” *See R.*, at 6 (emphasis added).

These allegations constitute a plain and obvious attack on the “plan or design” of the Intersection, which undisputedly was created in or about 1954. Simply put, the Appellants assert that the “plan or design” of the Intersection was negligent or otherwise substandard because it lacked traffic control devices, markings or warnings “*designed*” to benefit the safety of pedestrians. Stated another way, the design of the Intersection lacked improvements that, in Appellant’s opinion, promote pedestrian safety. These allegations constitute a claim “aris[ing] out of a plan or design for construction or improvement” to a State highway.

Likewise, Appellant’s allegation that ITD should have initiated a competent traffic *engineering* study to identify and remedy perceived defects in Plan 3B29 further supports the State’s contention that Appellant’s claim arises out of a “plan or design for construction and improvement” to a State highway. In particular, the Appellant argues that a competent traffic engineering study would have warranted “enhancements,” including upgraded lighting, four (4) pedestrian activated flashing yellow lights, two pedestrian diamond warning lights, and a safety island. These “enhancements” are another name for “improvements.” They evidence a challenge to Plan 3B29 because the Appellant asserts they would have increased pedestrian safety, and, thereby, would have decreased the possibility of the accident giving rise to this lawsuit. Trying to characterize the claim as a failure to inspect, improve and maintain the Intersection, as Appellant does, draws a specious and meaningless distinction, and represents a challenge to a plan that, as analyzed below,

substantially conformed with engineering and design principles that existed at the time it was prepared. Furthermore, under the Appellant's interpretation, all that is needed to undermine the plain language and intent of Idaho Code § 6-904(7), is to frame one's claim in terms of failure to inspect for and remedy a perceived changed and dangerous condition. Such an interpretation would vitiate the design immunity statute, rendering it meaningless surplusage.

Because the Appellant's causes of action allege claims that "arise[] out of a plan or design for construction or improvement" to a State highway, the analysis turns to whether the State can establish:

(1) the existence of a plan or design that was (2) either prepared in substantial conformance with existing engineering or design standards or approved in advance of construction by the legislative or administrative authority.

See Lawton v. City of Pocatello, 126 Idaho 454, 886 P.2d 330, 335 (1994).

To prove the existence of a plan or design, an actual writing need not be proffered, and substantial conformance to then-existing design standards could be established where a plan was made in compliance with, for instance, a national publication promulgated by the Federal Highway Administration. *Id.*, 886 P.2d at 335. Unless a plaintiff refutes a government's showing that it has satisfied these two requirements, the government will have immunity under the statute. *See Brown v. City of Pocatello*, 148 Idaho 802, 811, 229 P.3d 1164, 1173 (2010)

In this instance, the Trial Court did not err in ruling the State satisfied the *Lawton* elements. First, the Trial Court correctly found the existence of a plan, and, therefore, the first element in the

Idaho Code § 6-904(7) analysis is established. As the Trial Court acknowledged in its decision, the State relied in part on the Affidavit of Kevin Sablan (“Sablan Affidavit”). Attached as Exhibit A to the Sablan Affidavit is Plan 3B29, which was prepared in or around August 1954. *See R.*, at 124. In his affidavit, Mr. Sablan stated his belief that Plan 3B29 was the most recent set of construction plans for the highway. *See R.*, at 124. The Appellant, the Court observed, did not controvert the State’s contention that Plan 3B29 was the most recent set of plans or designs for the highway. *See R.*, at 345. As such, it is undisputed that a plan or design existed.

Turning to the second prong, it is clear the Trial Court did not err in finding that Plan 3B29 was approved in advance by an appropriate administrative body before 1955, and substantially conformed with the design and engineering standards in effect at the time they were prepared. For this element, the State relied on the Affidavit of Kent J. Fugal, a consultant for the Co-Defendant Nampa. Mr. Fugal’s affidavit unequivocally states that Plan 3B29 was prepared in substantial conformance with the existing engineering or design standards in effect at the time of preparation. *See R.*, at 52. Additionally, the fact that construction was performed on the site years ago demonstrates a de facto approval of the plans through the ITD administrative process. *See R.*, at 44.

The Appellant did not dispute the evidence the State submitted. The Appellant relied on the report of its engineer, Edward Stevens. As the Trial Court emphasized in its memorandum decision, the Stevens’ report opines whether the Intersection satisfies requirements set forth in a 2002 Federal Highway Administration study entitled Safety Effects of Marked Versus Unmarked Crosswalks at

Uncontrolled Locations for the installation of a marked crosswalk and other improvements. *See R.*, at 345. But whether the Intersection satisfies the requirements of a report authored nearly fifty years (50) after the initial design of the Intersection is irrelevant to the issue of whether Plan 3B29 was prepared in substantial conformance with engineering or design standards in effect in 1954. Therefore, the Trial Court correctly found that the second prong of the *Lawton* analysis was satisfied and that the State was immune from Appellant's claims pursuant to Idaho Code § 6-904(7).

Appellant's continued reliance on *Roberts v. Transportation Department*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991) and *Xiao Ping Chen v. City of Seattle*, 153 Wash.App. 890, 223 P.3d 1230 (2009) is irrelevant to whether the Trial Court correctly found that § 6-904(7) applied. The Appellant relies on *Roberts v. Transportation Department*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991) for the proposition that the State cannot delegate its statutory duties. In *Roberts v. Transportation Department*, the plaintiff sued ITD for failing to erect and maintain proper traffic control signs. The district court granted ITD's motion for summary judgment because it found ITD either did not owe the duties that were allegedly breached to the plaintiff or was immune under the "discretionary function" exception to government liability pursuant to Idaho Code § 6-904(1). *Id.* 730, 827 P.2d at 1181. The court of appeals reversed the district court, concluding that ITD had a statutory duty to furnish, erect and maintain signs on its highways pursuant to Idaho Code § 40-201, and that ITD could not undermine that duty by promulgating contradictory rules. Nor could it avoid its statutory duties by delegating its duty to another entity. *Id.* 732, 827 P.2d at 1183.

The Appellant's reliance on *Roberts v. Transportation Department* lacks merit because, in that case, the Idaho Court of Appeals did not consider the effect of Idaho Code § 6-904(7) on the plaintiff's causes of action. Furthermore, it is clear the State could have non-delegable duties relating to the crosswalk at issue in this lawsuit, yet still enjoy immunity under Idaho Code § 6-904(7). Indeed, "duty" is implicit in the concept of immunity statutes, which *immunize* a party for a breach of a *duty*, provided the immunity statute's requirements are met.

Moreover, as the Trial Court correctly reasoned, the Appellant's reliance on *Xiao Ping Chen v. City of Seattle* is of no assistance. First, unlike as in *Chen*, there is no evidence in this case that either the State or Nampa modified the Intersection or conducted a traffic study since its original design. But more importantly, the defense in *Xiao Ping Chen v. City of Seattle* was a common defense to a negligence action, specifically, that the plaintiff was outside the scope of a duty owed. By contrast, the defense at issue in this case is a statutory immunity defense, which has clear requirements if it is to apply. As analyzed above, the State satisfied the requirements of Idaho Code § 6-904(7), and the Appellant never offered disputing evidence. As such, the State is immune from the Appellant's claims.

Based on the foregoing, the Court should affirm the Trial Court's granting of summary judgment in favor of the State pursuant to Idaho Code § 6-904(7).

B. The Trial Court Correctly Found that the State’s Highway Accident Location (HAL) Program Likely Fulfilled Any Duties Owed Pursuant to Idaho Code § 40-201.

Idaho Code §40-201 and other related statutes makes a general pronouncement about the State’s obligation regarding State highways. It states in pertinent part:

40-201. STATE HIGHWAY, COUNTY HIGHWAY, HIGHWAY DISTRICTS AND CITY HIGHWAY SYSTEMS ESTABLISHED. ... The improvement of highways and highway systems is hereby declared to be the established and permanent policy of the State of Idaho, and the duty is hereby imposed upon the state, in all counties, cities, and highway districts in the state, to improve and maintain the highways within their respective jurisdiction as hereinafter defined, within the limits of the funds available. (Emphasis added).

Assuming that Idaho Code § 40-201 is specific enough to prescribe the required standard of conduct,¹ the State’s HAL program satisfies the statutory mandate. As set forth in the Affidavit of Kevin Sablan, a District 3 traffic engineer, the State established the HAL program. *See R.*, at 124. The HAL program identifies potential safety trouble spots on the State Highway system. *See R.*, at 124 & 91-112. The protocol of the HAL Program is set forth in the ITD’s HAL Report Methodology. *See R.*, at 91-112. The methodology for identifying potential trouble spots is based on a sophisticated formula which considers crash frequencies, the economic cost to society and the rate crash for the locations. *See R.*, at 91-112. . As part of Mr. Sablan’s duties as a traffic engineer

¹ A court may rely on a positive enactment of law for the purpose of establishing negligence when: (1) the enactment clearly and unambiguously defines the required standard of conduct; (2) the enactment was intended to prevent the type of harm the defendant’s violation of the enactment caused; (3) the plaintiff is a member of the class of persons the enactment was designed to protect; and (4) violation of the enactment was the proximate cause of the plaintiff’s injury. *Brizendine v. Nampa Meridian Irr. Dist.*, 97 Idaho 580, 586, 548 P.2d 80, 86 (1976).

for District 3, which includes the Intersection, he reviews and analyzes HAL reports yearly to determine the top twenty locations within the District that pose a potential safety deficiency. *See R.*, at 124.

As the Trial Court observed, the District 3 HAL data that Mr. Saban reviewed before the accident involving the Appellant did not identify either the Intersection or any of the surrounding intersections as posing a potential safety problem. *See R.*, at 124 & 346. Therefore, the State not only monitored the entire highway system “within the limits of the funds available,”² but it lacked knowledge of any dangerous condition at the Intersection. By implementing and complying with its safety monitoring program, HAL, the State met any obligation it may have had under Idaho Code § 40-201 or any statute.³ Thus, the Trial Court did not err in granting summary judgment in favor of the State on the basis that the State discharged its statutory duties under Idaho Code § 40-201 with the monitoring scheme implemented with HAL.

² Traffic engineers for each ITD District are given reports for only the top twenty high accident locations is a policy decision driven by financial limitations, and is consistent with the “limit of funds available” language contained in Idaho Code § 40-201.

³ To the extent Idaho Code § 40-201 triggered a duty to *maintain* the Intersection, it was discharged with the maintenance agreement it had with the City of Nampa. Idaho statutes permit the State to enter into such agreements with cities and highway districts for the maintenance of State highways running through cities, counties and other political subdivisions. *See* Idaho Code §§ 40-310(5), (13), 502.

C. Even if HAL Did Not Fulfill Duties Owed Pursuant to Idaho Statutes, the Trial Court Correctly Found that the Plaintiff Did Not Raise a Genuine Issue of Material Fact As to Whether the State Was Negligent.

The Appellant advanced a negligence theory of recovery against the State. In addition to its argument for immunity under Idaho Code § 6-904(7), the State contended that its HAL monitoring duty discharged any statutory duty it owed. In support of this argument, the State submitted the Affidavit of Kevin Sablan. The Appellant, in turn, did not dispute this material fact, which the Trial Court recognized as an independent basis upon which to grant summary judgment in favor of the State.

Idaho Rule of Civil Procedure 56(e) governs the defense of a motion for summary judgment, and states in relevant part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, *must set forth specific facts showing that there is a genuine issue for trial.*

The Trial Court did not err in ruling that the Appellant failed to submit facts demonstrating a triable issue. Although the Trial Court acknowledged that the Appellant asserted that accidents had occurred at the Intersection, and that the City of Nampa modified the Intersection after the Appellant's accident, it pointed out the Appellant did not create a genuine issue of material fact on the relevant issue of "whether or not the State complied with its own program for this particular intersection or that it has otherwise been negligent in light of the limitations as to funding that is built

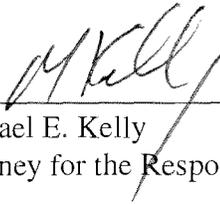
into the duties imposed by I.C. 40-201.” *See R.*, at 347-48. Furthermore, the Court emphasized that the Appellant did not “directly address” Sablan’s statement that the Intersection was not identified as “highly dangerous.” *See R.*, at 347. Based on the foregoing, the Trial Court did not err in ruling that the State was entitled to summary judgment because the Appellant did not set forth facts evidencing a genuine issue of material fact. *See I.R.C.P.* 56(e).

IV.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision and judgment of the District Court granting summary judgment in favor of the State.

Respectfully Submitted this 28 day of December 2011.

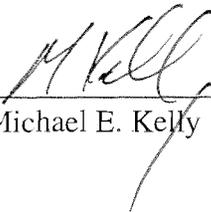


Michael E. Kelly
Attorney for the Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28 day of December 2011, two true and correct copies of the foregoing RESPONDENTS' BRIEF were served upon the following:

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