

Fisk v. Town of Redding (AC 40216)

Brief Summary: Plaintiff was injured when he climbed over a guardrail and stepped off a retaining wall without a fence atop of it. He subsequently, sought damages from the defendant town of Redding alleging the wall was an absolute public nuisance. The court held that the jury's response to the first interrogatory, that the condition was inherently dangerous, was fatally inconsistent with its response to the third interrogatory, that the defendant's use of the land was not unreasonable. Thus, granting the plaintiff a new trial.

Background

A retaining wall was constructed as part of the defendant's "streetscape project." Part of the project was constructing a five foot retaining wall without a fence. During construction, field conditions necessitated the height of the wall to become taller. A wooden barrier (in the style of a guardrail) was installed several feet away from the retaining wall. The wall was adjacent to the parking lot of Lumberyard pub. The plaintiff, Gregg Fisk, left the pub at 2a.m after consuming five beers. To reach Main Street faster, the plaintiff climbed over the guardrail and stepped off the wall. While traversing the unfenced retaining wall, the plaintiff fell and injured his left leg and ankle in many places. The plaintiff then brought an action against the defendant in absolute public nuisance. He alleged that he was injured when he fell off an unfenced retaining wall that had a nearly six foot drop to Main Street below. The defendant filed an answer and special defenses alleging assumption of risk and recklessness. The jury returned a verdict in favor of the defendant. The plaintiff filed a motion to set aside the verdict. In the motion he argued that the jury's answers to the first and third special interrogatories in the verdict form were inconsistent. The answers indicated that the jury found the condition to be inherently dangerous, but the use of the land was not unreasonable. The court denied the motion.

Issues

The issues on appeal were: (1) whether the jury's response to the first interrogatory, that the condition was inherently dangerous, is fatally inconsistent with its response to the third interrogatory, that the defendant's use of the land was not unreasonable; and (2) whether the court erred in excluding evidence that following the plaintiff's accident, the defendant installed a fence.

Discussion

The court held that: (1) because the jury's answers are inconsistent and cannot be harmonized, the court abused its discretion in denying the plaintiff's motion to set aside the verdict; and (2) the trial court properly excluded evidence that following the plaintiff's accident, the defendant installed a fence.

To prevail on a claim of nuisance, a plaintiff must prove that: (1) the condition complained of had a natural tendency to create danger and inflict injury upon person or property; (2) the danger created was a continuing one; (3) the use of the land was unreasonable or unlawful; and (4) the existence of the nuisance was a proximate cause of the injuries. For an absolute public nuisance, the plaintiff must also prove that: (1) the condition complained of interfered with a right common to the general public; and (2) the defendants' intentional conduct caused the condition deemed to be a nuisance. The test for reasonableness weighs the utility of the interference with the public right against the degree or severity of the interference.

When a claim is made that the jury's answers to interrogatories in returning a verdict are inconsistent, the court has the duty to attempt to harmonize the answers. Furthermore, in

reviewing a trial court's denial of a motion to set aside a verdict the court will not overturn it unless the trial court clearly abused its discretion.

In deciding the first issue the court noted that the condition the plaintiff claimed to have constituted a nuisance is not the wall itself, rather the retaining wall without a fence. Consequently, in determining the reasonableness of the condition, the jury had to determine whether there was any useful public purpose to erecting the wall without a fence atop of it. The court concluded that as a matter of law the jury could not have determined that the retaining wall without a fence was both inherently dangerous and not an unreasonable use of the land. It stated that there is no scenario in which the jury reasonably could have concluded, after determining that the wall without a fence was inherently dangerous, that the fact that it lacked a fence served any utility to the defendant or the community. Therefore, the court held that because the jury's answers are inconsistent and cannot be harmonized, the trial court abused its discretion in denying the plaintiff's motion to set aside the verdict.

Next, the court rejected the plaintiff's claim that the court erred in excluding evidence that following the plaintiff's accident, the defendant installed a fence. The court rejected this argument because section 4-7 (a) of the Connecticut Code of Evidence provides that evidence of measures taken after an event, which if taken before the event would have made injury or damage less likely to result, is inadmissible to prove negligence or culpable conduct in connection with the event.

Having found that the trial court abused its discretion in denying the plaintiff's motion to set aside the verdict, the court reversed the judgment and granted the defendant a new trial.

The dissent argued that whether a condition constitutes a public nuisance does not depend upon the inherent nature of the condition but involves a consideration of all relevant facts. Thus, the jury was required to consider a multiplicity of surrounding factors—not confined to review the wall in isolation. Based on this the dissent argued the jury could have found the use to be reasonable because installing both the barrier and the landscaping buffer to separate the retaining wall from pedestrian access in the parking lot were protective measures aimed at mitigating any adverse consequences of an otherwise dangerous retaining wall. Thus, concluding that the answers to interrogatories one and three were not inconsistent.

A key takeaway from this case is that the public is protected from inherently dangerous, unreasonable land use that results in an injury. However, this case demonstrates that there may be some confusion in how courts determine reasonableness; as the majority looked at the utility of the wall lacking a fence, whereas the dissent looked at the utility of other factors like the barrier. Thus, it would be beneficial for the legislators and/or the Supreme Court of Connecticut to clarify the proper reasonableness inquiry regarding absolute public nuisances.