Helen Palsgraf v. The Long Island Railroad Company

NOTE: This is a landmark case which came done in 1928. It discusses negligence as a concept and the necessary element which must be established for liability to ensue. Be sure to take your time deciphering this, as Judge Cardozo as a very interesting writing style.

Plaintiff was standing on a platform of defendant's railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package was dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform, many feet away. The scales struck the plaintiff, causing injuries for which she sues.

The conduct of the defendant's guard, if a wrong in its relation to the holder of the package, was not a wrong in its relation to the plaintiff, standing far away. Relatively to her it was not negligence at all. Nothing in the situation gave notice that the falling package had in it the potency of peril to persons thus removed.

Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. The plaintiff as she stood upon the platform of the station might claim to be protected against intentional invasion of her bodily security. Such invasion is not charged. She might claim to be protected against unintentional invasion by conduct involving in the thought of reasonable men an unreasonable hazard that such invasion would ensue. These, from the point of view of the law, were the bounds of her immunity, with perhaps some rare exceptions, survivals for the most part of ancient forms of liability, where conduct is held to be at the peril of the actor. If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming, with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one involving the risk of bodily insecurity, with reference to someone else. The plaintiff sues in her own right for a wrong personal to her, and not as the vicarious beneficiary of a breach of duty to another.

The argument for the plaintiff is built upon the shifting meanings of such words as "wrong" and "wrongful," and shares their instability. What the plaintiff must show is "a wrong" to herself, i. e., a violation of her own right, and not merely a wrong to someone else, nor conduct "wrongful" because unsocial, but not "a wrong" to any one. We are told that one who drives at reckless speed through a crowded city street is guilty of a negligent act and, therefore, of a wrongful one irrespective of the consequences. Negligent the act is, and wrongful in the sense that it is unsocial, but wrongful and unsocial in relation to other travelers, only because the eye of vigilance perceives the risk of damage. If the same act were to be committed on a speedway or a race course, it would lose its wrongful quality.

The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension. This does not mean, of course, that one who launches a destructive force is always relieved of liability if the force, though known to be destructive, pursues an unexpected path. "It was not

necessary that the defendant should have had notice of the particular method in which an accident would occur, if the possibility of an accident was clear to the ordinarily prudent eye". Some acts, such as shooting, are so imminently dangerous to anyone who may come within reach of the missile, however unexpectedly, as to impose a duty of prevision not far from that of an insurer. Even today, and much oftener in earlier stages of the law, one acts sometimes at one's peril. Under this head, it may be, fall certain cases of what is known as transferred intent, an act willfully dangerous to A resulting by misadventure in injury to B. These cases aside, wrong is defined in terms of the natural or probable, at least when unintentional. The range of reasonable apprehension is at times a question for the court, and at times, if varying inferences are possible, a question for the jury. Here, by concession, there was nothing in the situation to suggest to the most cautious mind that the parcel wrapped in newspaper would spread wreckage through the station. If the guard had thrown it down knowingly and willfully, he would not have threatened the plaintiff's safety, so far as appearances could warn him. His conduct would not have involved, even then, an unreasonable probability of invasion of her bodily security. Liability can be no greater where the act is inadvertent.

Negligence, like risk, is thus a term of relation. Negligence in the abstract, apart from things related, is surely not a tort, if indeed it is understandable at all. Negligence is not a tort unless it results in the commission of a wrong, and the commission of a wrong imports the violation of a right, in this case, we are told, the right to be protected against interference with one's bodily security. But bodily security is protected, not against all forms of interference or aggression, but only against some. One who seeks redress at law does not make out a cause of action by showing without more that there has been damage to his person. If the harm was not willful, he must show that the act as to him had possibilities of danger so many and apparent as to entitle him to be protected against the doing of it though the harm was unintended. Affront to personality is still the keynote of the wrong. The victim does not sue derivatively, or by right of subrogation, to vindicate an interest invaded in the person of another. He sues for breach of a duty owing to himself.

The law of causation, remote or proximate, is thus foreign to the case before us. The question of liability is always anterior to the question of the measure of the consequences that go with liability. If there is no tort to be redressed, there is no occasion to consider what damage might be recovered if there were a finding of a tort. We may assume, without deciding, that negligence, not at large or in the abstract, but in relation to the plaintiff, would entail liability for any and all consequences, however novel or extraordinary. There is room for argument that a distinction is to be drawn according to the diversity of interests invaded by the act, as where conduct negligent in that it threatens an insignificant invasion of an interest in property results in an unforseeable invasion of an interest of another order, as, e. g., one of bodily security. Perhaps other distinctions may be necessary. We do not go into the question now. The consequences to be followed must first be rooted in a wrong. The judgment of the Appellate Division and that of the Trial Term should be reversed, and the complaint dismissed, with costs in all courts.

WIENER et al., v. SOUTHCOAST CHILDCARE CENTERS, INC

Facts: Southcoast Childcare Centers, Inc. (Southcoast), had leased its child care property from First Baptist Church of Costa Mesa (the Church) since 1997. The child care center was located on a busy street corner on Santa Ana Avenue in Costa Mesa. A four-foot-high chain link fence enclosed the playground located adjacent to the sidewalk and street. On May 3, 1999, Steven Abrams intentionally drove his large Cadillac Coupe de Ville through the fence, onto the playground, and into a group of children.

The carnage caused by Abrams's act was horrific. He killed two children, Brandon Wiener and Sierra Soto, and injured several others. Plaintiffs Aaron and Pamela Wiener, the parents of Brandon, and Eric and Cindy Soto, the parents of Sierra (collectively, plaintiffs), sued Southcoast and the Church (collectively defendants), alleging wrongful death, negligence, and premises liability. Plaintiffs also sued Abrams, who is not a party to this appeal. A court-appointed psychiatrist examined Abrams and concluded that "the offense at the schoolyard in itself, in the context of Mr. Abrams' life pattern-behavior and in the context of our society's standards and norms, was patently and highly absurd and bizarre, and was so outrageous that it borders on the inconceivable." Abrams was convicted of first degree murder in the deaths of Brandon and Sierra with lying-in-wait and multiple murder special circumstances, attempted murder, and inflicting great bodily injury on the injured children. He was sentenced to life without parole.

Plaintiffs' complaints against defendants, which were consolidated in the trial court, alleged that defendants were aware the chain link fence in front of the property provided inadequate protection against intrusion into the child care center, that the fence was three to four feet from the roadway, and that Shirley Hawkinson, owner of Southcoast, had previously requested the Church provide funds to erect a higher fence in order to prevent the children from escaping the property. In the past, before Southcoast operated the child care center, a few noninjury traffic accidents happened near the property next to the sidewalk.

One freak accident occurred in 1996, of which Hawkinson testified she had no knowledge. According to a neighbor, a mail truck pulled up to the sidewalk across the street from the child care center, and the mail carrier reached out of his truck to open the adjacent mailbox. As the mail carrier reached for the box, he slipped, did a flip, and landed between the mailbox and the truck. The truck took off and headed toward the fence across the street. At the time, the property was leased by another school, not Southcoast. The truck bounced over the curb and went through the fence before coming to a stop at a tree inside the yard. Other than the mail carrier, who hurt his back, no one was injured in the incident.

Neighbors testified that other traffic incidents occurred near the premises involving vehicles that hit the curb, although no cars had gone through the fence at the child care center's location. The City of Costa Mesa reported no known traffic accidents at the child care center's site. Plaintiffs alleged, however, that had a sturdier barrier (i.e., a brick and iron fence) been in place at the time Abrams decided to kill the children, the barrier would have prevented him from driving his car onto the playground and killing them.

In nearly identical responses, defendants each moved for summary judgment, contending that Abrams's murderous rampage was a "wholly unforeseeable" criminal act that could not give rise to negligence liability. Neither defendant was aware of any criminal acts or incidents occurring on or around the child care property, and neither had notice of any prior similar acts that would place it on notice of a need for increased security. The Church also contended that the fence surrounding the playground was in compliance with the applicable code and safety regulations on the date of the incident.

In opposition to the summary judgment motions, plaintiffs asserted that defendants owed a duty as a matter of law to plaintiffs, because it was foreseeable that any vehicle could leave the road and strike the playground fence. Plaintiffs contended that defendants had a general duty to maintain their property in a reasonably safe condition, and that defendants had a statutory duty to fence the playground in a manner that protected the children. Plaintiffs argued that it did not matter whether the driver of the vehicle that killed the children acted negligently or with criminal intent,

because the risk of harm from an unsafe fence was the same, and that defendants owed a duty to make the fence stronger. Plaintiffs claimed that the four-foot-high chain link fence surrounding the property failed to protect the children from Abrams's car, and a stronger fence would likely have been allowed under the then current City of Costa Mesa Zoning Code. In addition, plaintiffs argued that defendants had not shown as a matter of law that the harm to the children was "wholly unforeseeable," that defendants were unaware of any similar or other criminal incidents that occurred on or around the child care center's property, or that the potential danger was unknown to defendants.

Defendants replied that the prior similar incident involving the mail truck was not a prior similar incident that made Abrams's crime foreseeable. Defendants also responded that the fence in place at the time of the rampage met all code and safety requirements, and was sufficient to stop traffic from entering the property in most cases. Therefore, according to defendants, the fence was sufficient to stop traffic from entering the property in all foreseeable circumstances.

The trial court granted summary judgment for defendants after finding that plaintiffs failed to present evidence of prior similar incidents of violent crime or criminal acts and therefore failed to show defendants owed a duty to prevent Abrams's murderous rampage. The Court of Appeal reversed the judgment, holding that an "errant" motorist careening through the fence accidentally was a foreseeable event, so that defendants' failure to build a stronger fence was a legal cause of the incident here, even though the actual incident was criminal in nature. We granted review.

Issue: Whether defendants have shown that plaintiffs have not established a prima facie case of negligence?

Holding: No. As indicated, in order to prevail in a negligence action, plaintiffs must show that defendants owed them a legal duty, that defendants breached that duty, and that the breach proximately caused their injuries. In the case of a landowner's liability for injuries to persons on the property, the determination of whether a duty exists, "involves the balancing of a number of considerations; the major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." When children are the focus of care, the landlord's duty is to protect the young from themselves and guard against perils that are reasonably foreseeable. "The determination of the scope of foreseeable perils to children must take into consideration the known propensity for children to intermeddle."

California law requires landowners to maintain land in their possession and control in a reasonably safe condition. In the case of a landlord, this general duty of maintenance, which is owed to tenants and patrons, has been held to include the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures. We also observed that "a duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be reasonably anticipated."

In the case of a criminal assault, the decision to impose a duty of care to protect against criminal assaults requires "balancing the foreseeability of the harm against the 'burdensomeness, vagueness, and efficacy' of the proposed security measures."

In cases of third party criminal acts, these are handled differently from ordinary negligence, and require a heightened sense of foreseeability before a defendant can be held liable for the criminal acts of third parties. There are two reasons for this: first, it is difficult if not impossible in today's society to predict when a criminal might strike. Also, if a criminal decides on a particular goal or victim, it is extremely difficult to remove his every means for achieving that goal. "A criminal can commit a crime anywhere" "but cars cannot crash into picnic tables just anywhere." Thus there is a distinction between acts of ordinary negligence and criminal acts. "The burden of requiring a landlord to protect against crime everywhere has been considered too great in comparison with the foreseeability of crime occurring at a particular location to justify imposing an omnibus duty on landowners to control crime." "There is no legal requirement in

[circumstances surrounding a foreseeable accident] for the type of heightened notice which might be provided by a prior similar incident, as may be necessary in instances of third party crime."

Applying such a balancing test to the present facts, we conclude defendants owed no duty to plaintiffs because Abrams's brutal criminal act was unforeseeable. No evidence indicated defendants' child care facility had ever been the target of violence in the past and no hint existed that either defendants or any other similar business establishment had ever been the target of any criminal acts. Indeed, here, the foreseeability of a perpetrator's committing premeditated murder against the children was impossible to anticipate, and the particular criminal conduct so outrageous and bizarre, that it could not have been anticipated under any circumstances.