

Duty of Care in the context of fatal RTAs: Valerie Tindall (2) Valerie Tindall (as administrator of the estate of Malcolm Tindall (deceased) v (1) Chief Constable of Thames Valley (2) Buckinghamshire County Council [2020] EWHC 837 (QB)

Judgement handed down on 7 April 2020

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Overview

The Defendants made an application to strike out a claim for alleged breach of the duty of care towards an individual at the scene of a road traffic accident. The Claimants contended that by attending the scene, the Police “assumed or fell under” a duty of care.

Master McCloud dismissed the Defendant’s application; the matter will now proceed to trial.

Facts

Given that the judgment was for a strike out application, Master McCloud sitting in the QBD proceeded on the basis of the pleaded facts.

Mr Tindall was driving on a country road on a winter morning; he came across a section of the road which had been frozen over (caused by a water leak and flooding) resulting in black ice having formed. His vehicle came off the road and he suffered non-fatal injuries. Having worked as a road gritter, Mr Tindall was concerned for other road users and began to warn passers-by about the black ice. Upon arrival and in his call to the emergency services, Mr Tindall stressed how dangerous the situation was. A warning sign was erected by police but once Mr Tindall had been dispatched to hospital, and debris had been removed from the road, that sign was removed. There were *“no functional steps...taken at the site to ensure further traffic knew of the hazard once the police left”*¹.

Tragically, a short time later, Mr Tindall was, once again, driving his car on the same stretch of road. An oncoming driver lost control on the ice and a head on collision resulted. Both drivers were killed. An investigation and inquest ensued with significant criticism being levelled at the police officers who had been in attendance at the first accident. A police

¹ [5] of the Judgment

disciplinary tribunal found the officers guilty of misconduct and the IPCC concluded there was a case to answer for gross negligence manslaughter and misconduct in a public office, although no prosecution took place.

High Court

The issue to be determined was “*whether on the current state of the law and without a trial [the court] can determine that there is no reasonable argument that the Police came under a duty of care to Mr Tindall and drivers like him*”².

The Court considered that the ‘orthodox’ legal position is that:

*“absent a specific statutory provision creating civil liability, public authorities stand in the same position as other individuals in relation to tort. There is, generally, no positive duty to protect individuals from harm. Yet **if a public authority takes steps which create or make worse a source of danger they may be held to come under a duty of care towards those foreseeably affected.**”*³

The Court cited numerous recent Supreme Court decisions including *Poole Borough Council v GN* [2019] UKSC 25, *Michael v Chief Constable of South Wales Police and ors* [2015] UKSC 2 and *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4.

Master McCloud discerned that what amounted to an intervention which makes a situation worse is “a very fact dependent exercise”⁴. She found that the actions of putting up a warning sign, removing the person who was warning traffic and then removing the warning sign after taking minimal steps to sweep the road debris may amount to sufficient intervention that made matters worse.

Further, she held that the “*law as to imposition of duty of care being in the state of flux which it is and with any duty of care being a fact-dependant decision if there are issues as to whether the case concerns the issue of ‘making matters worse’ or ‘not making things better...to strike this case out without trial would be incorrect*”⁵. In dismissing the Defendant’s application to strike out the Claimant’s claim, the Court concluded that the proposition that the Police made matters worse was not bound to fail on present authority.

² [8] of the Judgment

³ [10] of the Judgment (emphasis added).

⁴ [15] of the Judgment

⁵ [3] of the Judgment

Comment

Given the numerous Supreme Court decisions on this topic, as referenced within the body of this article, this case is conceivably destined for further determination by the appellate courts, and it will certainly be one to watch. However, what seems abundantly clear is that, on an application for strike out rather than at trial, the QBD were bound to conclude that it was an incredibly fact sensitive decision requiring full cross examination and live witness evidence.

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