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GALINDO V. TOWN OF CLARKSTOWN
(decided May 13, 2004)

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If a tree falls in Brooklyn, does Manhattan have to pay for it? To what extent should property owners advise people of potential dangers on their property — or on someone else's? Justice Cardozo eloquently tried to shed light on the duty of care, by stating:

If conduct has gone forward to such a stage that inaction would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a *duty to go forward*. So the surgeon who operates without pay, is liable though his negligence is in the omission to sterilize his instruments; the engineer, through his fault is in the failure to shut off steam; the maker of automobiles, at the suit of some one other than the buyer, though his negligence is merely in inadequate inspection.¹

Property owners may be unaware, but they are faced with the dilemma of deciding when they have such a duty to go forward. If landowners are responsible for identifying potential danger spots, how should courts determine such areas? Should landowners be subject to liability if their determinations prove to be incorrect?² Courts must make these difficult and policy-laden decisions. Without more direction from the courts or even the legislature, injured parties may suffer harmful consequences.

In *Galindo v. Town of Clarkstown*, the New York State Court of Appeals was asked to draw lines regarding landowner liability and responsibility.³ This case stemmed from an unfortunate tragedy that might have been avoided. In a 4 to 3 decision, a divided court

* J.D., New York Law School, 2005.

1. See *H.R. Moch Co. v. Rensselaer Water Co.*, 247 N.Y. 160, 167-68 (1928) (discussing privity of contract and the duty of care) (emphasis added).

2. *Galindo v. Town of Clarkstown*, 759 N.Y.S.2d 757, 759 (2d Dep't 2002), *aff'd*, 2 N.Y.3d 633 (2004).

3. 2 N.Y.3d 633 (2004).

upheld a summary judgment motion dismissing a complaint against a landowner alleging that the landowner failed to warn of a dangerous condition on neighboring property.⁴ The court held that landowners are not obligated to protect or alert others from defective or dangerous conditions on neighboring premises, unless the owner contributed to or created the condition.⁵ In so holding, the court set clear precedent that injured persons cannot sue property owners for injuries stemming from adjacent properties.⁶ This case comment argues that although the Court of Appeals accurately interpreted the law, it too narrowly applied that interpretation to the facts of this case, thereby creating an unclear subset of negligence law. The court should establish a clearer test to determine whether property owners can be held liable for failing to warn of dangerous conditions emanating from adjacent property. Without such a test, injured persons are precluded from any recovery, and landowners may remain complacent in disclosing severe and hidden potential dangers that pose a threat to their property.

In *Galindo*, the controversy arose from a powerful storm that swept through the Town of Clarkstown (the Town), located in Rockland County, New York.⁷ The storm was so forceful that it caused damage to a massive eighty-foot tree located on the Town's property, which was adjacent to Richard Clark's property.⁸ Two days later, Clark went to assess the destruction caused by the storm and noticed that the damaged tree on the Town's land was now on an angle and "tilted toward" his property.⁹ Upon further inspection, he noticed that the roots of the tree had loosened.¹⁰ Although Clark was alarmed by the possibility the tree might fall onto his home or onto the road, he did not think the tree would fall imminently.¹¹ Clark and his wife neither moved out of their house,

4. *Id.* at 637.

5. *Id.* at 636-37.

6. *Id.* at 636. The court, however, suggested that a duty may arise in situations where the danger is more apparent to the property owner. *Id.* at 637; *see infra* text accompanying note 40.

7. *Galindo*, 2 N.Y.3d at 634.

8. *Id.*

9. *Id.* at 635.

10. *Id.* at 634-35.

11. *Id.* at 637.

nor moved their cars, even though, as Clark admitted, one of the cars was in “a potential danger radius.”¹²

In an attempt to remedy the situation, Clark notified a Town Highway Department employee who was working across the street that the tree had been damaged.¹³ The employee did not approach the tree to view the damage, but directed Clark to report the damaged tree to the Town Supervisor.¹⁴ Clark never received a response from the Town Supervisor.¹⁵ Immediately after noticing that the tree had tilted even more, Clark tried to contact the Town Supervisor for a second time.¹⁶ Later that day, Jacqueline Galindo, Clark’s housekeeper, arrived at his home.¹⁷ While Galindo was inside cleaning, Clark left the house to run errands.¹⁸ Clark noticed a car parked behind his wife’s but did not approach it or see anyone inside.¹⁹ While Clark was away from home, the Town’s damaged tree fell onto the parked car.²⁰ Galindo’s husband, who was inside the car when the tree fell down, died as a result.²¹

Galindo brought a wrongful death action in New York Supreme Court, Rockland County, against Clark and the Town.²² Galindo alleged that Clark breached a duty to warn her of the dangerous condition created by the damaged tree.²³ Galindo settled with the Town after the court denied the Town’s motion for summary judgment.²⁴ However, the court disagreed with Galindo’s argument that Clark had a duty to warn and granted Clark’s motion for summary judgment. It held that Clark had no duty to warn of conditions on property he did not own.²⁵

12. *Id.*

13. *Id.*

14. *Id.* at 635.

15. *Id.*

16. *Id.* at 638 (Kaye, C.J., dissenting).

17. *Id.* at 635.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Galindo*, 759 N.Y.S.2d at 759.

24. *Galindo*, 2 N.Y.3d at 635-36 (discussing the procedural history of the case and lower court decisions).

25. *Id.*

On appeal, the Second Department of the Appellate Division affirmed the Supreme Court's grant of summary judgment to Clark, concluding that property owners do not have a duty to warn persons on their property of dangerous conditions located outside their property.²⁶ The court did not impose upon landowners the duty to determine whether an unsafe condition on an adjacent parcel of property might become an unsafe condition upon their own land.²⁷ Such an imposition, the court reasoned, would create an "unreasonably onerous burden" upon landowners.²⁸

Judge Ritter, writing for the dissent, stated that landowners have a duty to warn those on their property of dangerous or defective conditions, regardless of whether danger emanates from that property.²⁹ The dissent supplied a "zone of danger" analysis in which no distinction is made between the property from which the danger emanates and the property on which the actual injury occurs.³⁰ Under this analysis, the focus is on landowners' duty to warn guests of known dangers on their property that may result in injury or death if guests come within the "zone of danger."³¹ Judge Ritter pointed out that Clark contacted the Town several times to remedy the defective tree and knew that the plaintiff's husband's car was parked directly in the "anticipated fall line" of the tree, directly in the "zone of danger."³² These pressing concerns, the dissent said, should have triggered a warning.³³

The Court of Appeals affirmed the Appellate Division's decision.³⁴ Simply restating the rule applied by the Appellate Division, the court held that unless landowners produced or contributed to a hazardous condition, landowners do not have a duty to warn others of dangerous conditions emanating from neighboring premises.³⁵ The court stated that without ownership or control over property, it would be unfair to hold landowners liable for accidents resulting

26. *Galindo*, 759 N.Y.S.2d at 759.

27. *Id.*

28. *Id.*

29. *Id.* at 760 (Ritter, J., dissenting).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Galindo*, 2 N.Y.3d at 636.

35. *Id.* at 636-37.

from a dangerous condition on neighboring property.³⁶ In this case, Clark neither owned nor controlled the property where the tree was located, nor was he empowered to remove the tree.³⁷ In fact, if Clark had attempted to resolve the situation by personally removing the tree, criminal liability might have been imposed.³⁸ Thus, Clark had no duty to warn Galindo about the tree.³⁹ The court lessened the severity of its holding by indicating that liability could be imposed upon landowners when risks from neighboring property are so apparent to landowners, but not to guests, that a warning needs to be given.⁴⁰

Chief Judge Kaye, writing for the dissent, argued that the majority's application of the duty of care standard imposed upon landowners was too narrow.⁴¹ According to Judge Kaye, courts deciding cases involving injury from conditions on adjacent property should employ the same test they would apply in any other negligence or duty of care case, namely, what a reasonably prudent person would do under similar circumstances.⁴² She further argued that the technical location of the dangerous condition, in this case the damaged tree rooted in the Town's property, should not be the main focus, and consequently the end, of the inquiry.⁴³ Rather, the inquiry should focus on the locus of the risk of injury, in this case Clark's property, not just on the exact location of the dangerous condition.⁴⁴ Although the tree was on the Town's land, the dangerous condition threatened to injure Clark's property or those on it; thus,

36. *Id.*

37. *Id.*

38. *Id.* (noting that under the Town's criminal code "No person . . . shall do or cause to be done any damage or destroy any tree upon town highways, town parks or other town property," and "[a]ny person committing an offense against [§ 5-11] of this chapter shall be guilty of a violation punishable by a fine not exceeding two hundred fifty dollars (\$250) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment" (quoting CLARKSTOWN, N.Y., CODE §§ 5-11, 5-17 (2005))).

39. *See id.*

40. *Id.* at 637.

41. *Id.* at 638.

42. *Id.* at 640.

43. *Id.* at 638.

44. *Id.*

the duty imposed upon Clark was a duty to warn guests of that condition.⁴⁵

According to the dissent's analysis, the court should have denied Clark's motion for summary judgment because there was sufficient evidence for the case to be presented to a jury.⁴⁶ Judge Kaye saw Clark's report to the Town Supervisor as imposing on Clark himself a duty to warn, for it included statements such as: "the tree looked to me to be threatening to do some damage to . . . either my property or the road or power lines," and "the tree might present a hazard to [my] house, and that in order for the tree to fall and strike [my] house it would have fallen straight down the line of the driveway."⁴⁷

The court's use of the technical location of a hazardous condition as the basis for determining when landowners have a duty to warn substantially narrows landowners' duty of care. In fact, it imposes no duty whatsoever upon landowners with respect to anything outside the confines of their own property.⁴⁸ The zone of danger analysis articulated by Judge Ritter and echoed by Judge Kaye should be the basis for future cases addressing situations similar to that in *Galindo*.⁴⁹ The appropriate rule for courts to apply should be that landowners' duty of care includes warning those on their property of known dangers on the land without regard to the specific root of the danger.⁵⁰ If a known danger which is not easily observable could likely lead to injury, a duty to warn should follow.⁵¹ This test establishes a basis upon which adjacent landowners can reasonably be assured that guests' safety will be taken into account, regardless of where the danger emanates from. Placing this "minimal burden" on landowners may save lives.⁵²

In ruling as it did, the *Galindo* court veered away from previously established landowner liability standards.⁵³ In its 1976 opin-

45. *Id.* at 639.

46. *Id.* at 640.

47. *Id.* at 639. (Kaye, C.J., dissenting).

48. *Id.* at 640. *But see supra* note 7.

49. *See Galindo*, 759 N.Y.S.2d at 760 (Ritter, J., dissenting); *Galindo*, 2 N.Y.3d at 640.

50. *See id.*

51. *See Galindo*, 759 N.Y.S.2d at 760 (Ritter, J., dissenting).

52. *See Galindo*, 2 N.Y.3d at 640 (Kaye, C.J., dissenting).

53. *See Basso v. Miller*, 40 N.Y.2d 233 (1976); *Tagle v. Jakob*, 97 N.Y.2d 165 (2001).

ion in *Basso v. Miller*, the Court of Appeals greatly simplified the earlier landowner negligence standard by abandoning categories of plaintiffs.⁵⁴ Instead, the court devised a single standard of reasonableness: a property owner has the duty to act as a reasonable person in the maintenance of his land in a reasonably safe condition in light of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk of injury.⁵⁵

In *Tagle v. Jakob*, the Court of Appeals applied the *Basso* analysis.⁵⁶ In *Tagle*, a landowner leased her property subject to an easement running through a portion of the backyard.⁵⁷ The landowner did not advise the tenant that there were uninsulated electric wires running through a tree on the easement.⁵⁸ While climbing the wired tree, the tenant's guest touched the wire and was electrocuted.⁵⁹ The injured guest sued the landowner for failure to warn of the danger of the uninsulated wires.⁶⁰ The court focused its fact-specific analysis on whether the wires were readily obvious to the tenant, concluding that, given the obviousness of the wires, the landowner had no reason to believe the tenant would not readily see the hazard.⁶¹ Thus, the landowner had no duty to warn.⁶² This analysis is in stark contrast to the analysis set forth in *Galindo*.⁶³ If the *Galindo* court had used the *Basso* analysis, it likely would have found Clark liable if the damaged tree was not obvious to Galindo. Abandoning this analysis lessens landowners' responsibility and might lead to the wrong result, especially where the possibility of serious injury is great.

54. See 40 N.Y.2d 233, 239-40 (1976) (removing liability based upon classification as an invitee, licensee, or trespasser).

55. *Id.* at 241 (quoting *Smith v. Arbaugh's Rest.*, 469 F.2d 97 (D.C. Cir. 1972)).

56. See 97 N.Y. 2d 165, 168 (2001).

57. *Id.* at 167.

58. *Id.*

59. *Id.*

60. *Id.* at 169.

61. *Id.* at 170.

62. *Id.* at 169. See also *Galindo*, 2 N.Y.3d at 639 (positing that "[i]f a live power line were dangling precariously over a person's property, any homeowner — though unable to eliminate the danger other than by calling the local utility who owns the line — would warn children to stay away. If the danger were not open and obvious — perhaps at night — the owner should warn visitors as well.")

63. See *Galindo*, 2 N.Y.3d at 636-38.

In stark contrast to *Basso* and *Tagle*, the *Galindo* court took the position that because Clark lacked the requisite control of the adjacent property, there was no duty to warn Galindo.⁶⁴ Looking simply at control greatly lessens landowners' responsibility. A dangerous condition might encroach so far over onto one's property that the duty to attempt to remedy the situation should be imposed. The damaged tree hanging over Clark's property is a prime example. Although Clark attempted, without response, to notify the Town of the condition of the tree,⁶⁵ he should have taken further action. A simple warning to the housekeeper might have avoided a terrible tragedy. The facts in this case demonstrate that Clark had a duty to warn Galindo of the potential danger. The lack of response from the Town, coupled with Clark's statement that "it looked like there was a possibility it [the tree] would come down,"⁶⁶ illustrates why Clark had a duty to warn. As Cardozo stated, "[t]he query always is whether the putative wrongdoer has advanced to such a point as to have launched a force or instrument of harm, or has stopped where inaction is at most a refusal to become an instrument for good."⁶⁷

How are guests protected from injury and property owners from liability when the law is so unclear? Although fine lines are difficult to draw in negligence law, there needs to be a reliable standard for victims and property owners to rely upon. The reasonable person standard may be that reliable standard. Although tort law is primarily based in the common law, this is an area where legislative action may be needed. A balanced solution that addresses the protective needs of both landowners and guests should be developed.

64. *Id.* at 637-38.

65. *Id.* at 635.

66. *Id.* at 639.

67. *H.R. Moch Co.*, 247 N.Y. at 168.