

Wold and Wilson v. Wheeler and Bear Paw Energy v. Albin (decision)

DISTRICT COURT

NEGLIGENCE: No duty by landowners to prevent obstructions by shelter belt and bus stop shed in case involving intersection collision ... first impression ... Irigoien.

Dean Wheeler was driving a Bear Paw Energy pickup east on Richland Co. Road 131. Kirk Wold was driving a Ford pickup south on CR 338 with Tammy Wilson as a passenger. A yield sign on Wheeler's path is visible for eastbound traffic on CR 131 near the intersection with CR 338. Wheeler admittedly failed to comply with the yield sign and entered the intersection while braking. Wold acknowledges that he did not brake. The front of Wold's pickup struck the side of Wheeler's pickup in the intersection. Wheeler died and Wold and Wilson claim injuries and damages. Robert & Sheree Albin maintain a shelter belt along their property that runs parallel to CR 131, comprised mainly of trees and other vegetation and located on the NW corner of the intersection. Albin has lived at the farm for 37 years, and the shelter belt trees were there when he moved onto the property. Also near the intersection was a small shed utilized by Albins as a school bus stop. In the decades that he has lived on his property or in the near vicinity there was one accident at the intersection, in 1968 or 1969. Before the subject accident no one told Albins that the trees or bus stop were causing a visual obstruction. Bear Paw filed a third-party complaint against Albins seeking contribution and asserting that they negligently allowed the trees and shed to obstruct visibility. Albins request summary judgment that they owe no duty to remove conditions on their property that obstructed visibility at the intersection and, alternatively, that Wheeler's failure to comply with the yield sign was a superseding intervening cause which cuts off their liability.

The Montana Supreme Court has not decided whether a landowner such as Albin owes a duty to maintain conditions so as to prevent visual obstructions to motorists at intersections. However, Montana law provides the analytical framework for determining whether a duty of care is triggered. *Busta* (Mont. 1996) recognized that "the obligation of defendants turns on whether 'the offending conduct foreseeably involved unreasonably great risk of harm to the interests of someone other than the actor.'" (quoting *Mang* (Mont. 1969)). Also, the policy considerations to be weighed include the moral blame attached to the defendant's conduct, the desire to prevent 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. *Streever* (Mont. 1988).

Albins do not owe a duty of care to remove or maintain conditions on their property so as to prevent visual obstructions to motorists at the intersection. Presence of the shelter belt and shed did not create an objectively foreseeable risk of unreasonable harm under the circumstances. Any visual obstruction created by conditions on Albins' property is no different from obstructions caused by houses and buildings encountered routinely by motorists. While Albins' trees may have required Wheeler and Wold to proceed with some additional caution, the shelter belt or shed could not reasonably have been expected to pose any danger to motorists provided they were driving in a reasonably prudent manner. Nor do policy considerations justify imposition of a duty on Albins to prevent visibility obstructions at the intersection. Generally, landowners in their position would have no expertise in determining proper visibility for motorists or in concluding what steps to take to maintain sufficient sight lines at intersections. Imposing such a duty would result in a significant burden of increased costs and uncertainty in attempting to maintain sufficient motorist visibility. Richland Co. and motorists at this intersection are in a much better position to take precautions necessary to minimize danger and avoid injury. Imposition of a duty on landowners to maintain proper sight lines at an intersection if at all, should be left to the Legislature. Summary judgment for Albins.

Wold and Wilson v. Wheeler and Bar Paw Energy v. Albin, Richland DV 07-29, 6/6/11.

Brenda Blazer (Vogel Law Firm), Bismarck, for Plaintiffs; Jared Dahle (Nelson & Dahle), Billings, for Albins; Larry Boschee (Pearce & Durick), Bismarck, for Bear Paw; (Wheeler was dismissed).

