

Bond Case Briefs

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IMMUNITY - NORTH CAROLINA

Estate of Ladd by Ladd v. Funderburk

Court of Appeals of North Carolina - October 18, 2022 - S.E.2d - 2022 WL 10219785 - 2022-NCCOA-676

Deceased motorist's wife and estate filed suit against property owners for wrongful death, negligence, and negligent infliction of emotional distress, alleging that owners' negligence caused tree that stood in owners' front yard to fall on motorist's car during a storm, fatally injuring motorist and injuring motorist's wife, and owners cross-sued town for contribution under the Uniform Contribution Among Tortfeasors Act.

The Superior Court denied town's motion for summary judgment. Town appealed.

The Court of Appeals held that:

- Town's statutory affirmative duty to keep public streets free from unnecessary obstructions did not require preventative measures for tree that was not already obstruction;
- Town's activity in failing to exercise its authority pursuant to tree ordinance to remove tree from owners' yard was necessarily governmental in nature; and
- Town did not waive its governmental immunity by purchasing liability insurance.

A municipality's statutory affirmative duty to keep public streets open for travel and free from unnecessary obstructions does not require preventative measures for trees on private property which are not already an obstruction.

Town's activity in failing to exercise its authority pursuant to tree ordinance to remove tree from property owners' front yard was necessarily governmental in nature, and thus town was entitled to defense of governmental immunity, in action by deceased motorist's wife and estate to recover for injuries sustained when tree fell on motorist's car during storm; ordinance preserved authority to eliminate threats to public health, safety, or welfare from trees solely for town, and private party could not have, under color of ordinance, walked onto owners' property and unilaterally cut down tree.

Town did not waive its governmental immunity by purchasing liability insurance, where policy contained clause stating that it applied to tort liabilities of any insured only to extent that such liability was not subject to any defense of governmental immunity.