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Worker can sue power company

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A man injured while maneuvering his tow truck under power lines owned by Ameren Illinois has a negligence case against the power company, an appellate panel ruled.

In a written opinion Wednesday, a panel of the 4th District Appellate Court ruled that the open and obvious doctrine, as argued by Ameren, does not apply to the duty created by the Public Utilities Act.

In July 2015, Bradley A. Fox was hired by the City of Beardstown in Cass County to assist with removing sand bunkers that were placed under Ameren's power lines to protect a water treatment plant from flooding.

While attempting to remove the sand bunkers, Fox used an extended boom attached to his tow truck, which eventually came in contact with the overhead power lines.

According to the complaint, Fox realized that the truck's cab had caught on fire. When he attempted to exit the truck to get a fire extinguisher, he was electrocuted and thrown from the truck. He sustained a knee injury, spine injury and suffered burns on his body.

Fox and his wife, Michelle Fox, sued Ameren pursuant to section 5-201 of the Public Utilities Act, alleging Ameren was negligent by violating its statutory duty to install and maintain its power lines above the minimum vertical clearance requirements and common-law duty to maintain power lines in a safe condition.

The panel agreed with Fox, holding that Cass County Circuit Court Judge Kevin D. Tippey erred in dismissing Fox's case. It reversed and remanded it for further proceedings.

Justice Robert J. Steigmann delivered the judgment of the court, with opinion.

"We conclude that the open and obvious doctrine does not apply to the duty created by the [Public Utilities] Act and Rule 232 and even if we applied the open and obvious doctrine in this case, Ameren would still owe a common-law duty to Fox under a traditional duty analysis," Steigmann wrote.

According to court documents, Ameren admitted that on the day Fox was injured, its power lines did not meet minimum vertical clearance requirements as promulgated by the Illinois Commerce Commission.

The documents also show that another dump truck driver hired to transport sand to the bunkers had struck the power lines a month prior to Fox's accident. Following that accident, Ameren was called to repair the damaged line, but its employee only restored the line to the same height it was before the accident.

Steigmann noted ICC adopted Rule 232, which requires the power lines at issue in this case to have 20.75 feet of vertical clearance. The power lines were at 17.379 feet at the time of Fox's injury.

The panel concluded that Fox properly pleaded the necessary elements to sustain a claim of negligence against Ameren.

Steigmann said that "a condition on the property is 'open and obvious' when a reasonable person in the plaintiff's position, exercising ordinary perception, intelligence, and judgment, would recognize both the condition and the risk," citing Winters v. MIMG LII Arbors at Eastland, LLC, 2018 IL App (4th) 170669.

According to Bier v. Leanna Lakeside Property Association, 305 Ill. App. 3d 45, 61, 711 N.E.2d 773, 398 (1999), unlike the common-law defense of contributory negligence, the open and obvious doctrine is not a defense to negligence but an analytical doctrine for determining the existence of a duty.

"Accordingly, if (as in the present case) a statute affirmatively provides that a duty exists, then no analysis involving the open and obvious doctrine is necessary or appropriate," Steigmann wrote.

Ameren argues that the open and obvious doctrine must apply here despite its duty being statutory because of the Illinois Supreme Court's decisions in several other cases, including Barthel v. Illinois Cent. Gulf R.R. Co., 74 Ill. 2d 213, 218, 384 N.E.2d 323, 326 (1978). Barthel held that the Act did not provide for strict liability.

The panel disagreed with Ameren's argument, noting that "an application of the open and obvious doctrine here is inapposite to the spirit of the Act and a plain reading of Rule 232."

It also noted that the cases Ameren cites are distinguishable, and a conclusion that the open and obvious doctrine does not apply to this section of the act does not create strict liability.

“To hold that the open and obvious doctrine applies in the present case would undermine the purpose of section 5-201 of the Act and render the language of Rule 232 meaningless,” Steigmann wrote.

Justices Craig H. DeArmond and Peter C. Cavanagh concurred in the judgment and opinion.

Fox is represented by Richard L. Pullano, Mathew T. Siporin and Michael J. Pullano of Pullano Law Offices.

“I’m very happy for my client because the appellate court made such a well-reasoned decision,” Siporin said.

Ameren Illinois is represented by Springfield attorney Thomas H. Wilson, as well as Chicago attorneys Robert E. Elworth and Julieta A. Kosiba of HeplerBroom, LLC. The attorneys could not be reached for comment, nor could the company.

The case is Fox v. Ameren Illinois Co., 2022 IL App (4th) 210633.

Practice Areas: Personal Injury Law, Tort Law