

SUPREME COURT OF LOUISIANA

No. 98-C-2208

Kelly Darbonne Cormier, et al.

versus

T.H.E. Insurance Company

Knoll, Justice, dissenting.

For the following reasons, I respectfully dissent from the majority's determination that the Department of Public Safety and Corrections (Department) did not owe a duty to plaintiff by failing to implement the Amusement Rides Safety Law (Safety Law). "[I]n the absence of the requisite relationship, there generally is no duty to protect others against harm from third persons." W. Page Keeton, et al., *Prosser and Keeton on the Law of Torts* § 56, at 385 (5th ed. 1984). However, here the Legislature specifically assumed the duty to protect the amusement riding public from unsafe rides and delegated this duty to the Department, creating the requisite relationship. This duty imposed by the Legislature is attended with the responsibility to formulate rules necessary to carry out its function as inspector of amusement rides. Without having implemented standards to guide the inspection process, the Department's omission leaves the Safety Law toothless and the majority's rationale effectuates a veto of the Legislature's intent and purpose.

The majority correctly states that "[w]hen a duty is imposed by statute, the court must attempt to interpret the legislative intent as to the risk contemplated by the legal duty, often resorting to the court's own judgment of the scope of protection intended by the legislature." Cormier v. T.H.E. Ins. Co., 98-C-2208, slip. op. at 7 (La. / /99), ___ So.2d ___. The Legislature's intended scope of protection was clearly set forth in House Concurrent Resolution 279 of the 1992 Regular Session:

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the secretary of the Department of Public Safety and Corrections to implement the provisions of the Amusement Rides Safety Law and to adopt and issue rules required therein with the utmost diligence and promptness in the interest of public safety.

1992 La. Acts 244, § 2 (emphasis supplied); see also La.R.S. 40:1484.3 (“The secretary shall adopt and issue rules . . . for the protection of the public.”), :1484.7(stating that use of an amusement ride will be prohibited if a substantial probability of death or serious physical injury to the public from its continued use is found and further use will be prohibited until the ride is made safe for public use). The public policy clearly and unambiguously expressed by the Legislature governs and answers the very question of who the Safety Law was intended to protect: members of the public, like Blake Cormier, who are injured while enjoying amusement rides and suffer serious injuries which could have been prevented had the Safety Law been enforced by those duty-bound by the law.

The failure of the Legislature to fund a program under the Safety Law is immaterial to the existence of this duty owed by the Department. As stated by Judge Saunders in his concurrence with the Third Circuit’s opinion in the case sub judice, “each citizen of the state is under an obligation to refrain from doing harm to others and, the fact that we may not have the resources to keep our property in good order, does not absolve us from harm we may cause by failing to do so. Subdivisions of the state should be held to the same standard as the people they govern.” Cormier v. T.H.E. Ins. Co., 97-1143 (La.App. 3 Cir. 5/27/98), 716 So.2d 387, 398.

In my view, the issue is not whether a duty is owed, as clearly it is, but rather a causation question. Causation was a troublesome issue because it was not proven exactly how the child fell out of the ride. The trial court found the plaintiff proved

three possible ways the child could have fallen out of the ride and concluded,

. . . I think that but for the absence of the State's intervention into the amusement ride business which it was mandated to do by its own statute, this accident probably would not have happened. And I find that simply because with adequate warnings which would have probably been there had the State done its duty under the statute, this child may never have gotten on this ride.

This issue was a very fact driven determination by the trial court. In my view, I cannot say the trial court was clearly wrong in finding the state partially at fault under its "but-for" analysis and would affirm the court of appeal.