[2002] QCA 118

COURT OF APPEAL

DAVIES JA
MUIR J
MULLINS J

Appeal No 6595 of 2001

MARIA THERESE SOPER — Plaintiff/Appellant

and

GOLD COAST CITY COUNCIL
(A BODY CORPORATE) — Defendant/Respondent

BRISBANE

..DATE 25/03/2002

JUDGMENT

DAVIES JA: I will ask Justice Mullins to deliver her reasons first.

MULLINS J: The appellant appeals against the dismissal of her action against the respondent for damages for personal injury when she slipped and fell while walking down an embankment adjoining Stanmore Road near the causeway across the Albert River.

The appellant suffered a fractured right ankle in the fall. The respondent was sued as the occupier of the land on which the appellant fell. What was in issue was whether the respondent breached the duty of care which it owed as occupier to the appellant. The learned trial Judge found that there was no breach. It is that finding which is the subject of this appeal.

On 27 December 1997 the appellant had parked her motor vehicle in a car park controlled by the respondent adjacent to the causeway. Access to the car park was gained from Stanmore Road. Travelling from the Beenleigh/Beaudesert Road along Stanmore Road in the direction of the causeway, the car park is on the left hand side of Stanmore Road.

At the entrance of the car park was a fixed sign facing people travelling towards the causeway which prohibits swimming in the causeway, stating "Danger, strong undertow near causeway." There was a temporary roadworks sign tied to the base of that

sign prohibiting swimming which had not been placed there by the respondent and which protruded onto the bitumen edge of Stanmore Road.

The appellant had parked her motor vehicle in the car park with the intention of walking down to the causeway where her husband was netting juvenile eels. A picnic area controlled the respondent adjoined the car park. Although the picnic area had been developed by the respondent, the banks of the Albert River at the causeway had not been developed. There were roughly formed steps down to the causeway from the edge of the picnic area which had not been made by the respondent.

The grassy embankment on which the appellant fell joined the varying levels of the car park and Stanmore Road. Because the temporary road sign protruded on to the bitumen, even though it did not block access along the side of the road, the appellant decided to walk across the grassy embankment and then along the side of Stanmore Road to the causeway rather than her preferred method of walking out of the car park entrance and down beside Stanmore Road. The slope of the grassy embankment angled down a short distance at 35 degrees to the horizontal plane.

The learned trial Judge accepted that the causeway area was used by numbers of people and found that it was reasonably foreseeable that a person using the car park might want to gain access to the causeway, but that it could be done

satisfactorily by walking beside Stanmore Road from the car park entrance.

The learned trial Judge found that it was not intrinsically unsafe to walk down the grassy slope and the appellant was in a position to assess whether she could safely negotiate the embankment. The learned trial Judge also found that the risk of slipping may be safely assumed to be known by users of the car park and that the likely results from slipping would be merely loss of dignity or temporary soreness or bruising. He also referred to grassy slopes being common in the respondent's parks, gardens and public areas.

The learned trial Judge applied the test formulated by Justice Mason in Wyong Shire Council v. Shirt (1980) 146 CLR 40 at 47-48 and stated:

> "I do not believe the Council acting reasonably as the occupier of the land was required to construct steps from the car park to the causeway, nor do I believe the Council was required to signpost or fence off the embankment."

The appellant complains that the learned trial Judge erred in law in applying that test and that on the facts as found by the learned trial Judge he should have concluded that the failure to provide steps from the car park to the causeway did amount to a breach of duty.

In the light of the learned trial Judge's findings about the

common occurrence of grassy slopes in the respondent's local authority area, the risks of slipping being known to the users of the car park on this particular grassy embankment, the likely injuries which would follow from slipping and the river area being underdeveloped, there was no error in the learned trial Judge's conclusion about what was required of the respondent as a reasonable occupier.

The other ground of appeal is that the learned trial Judge erred in law in holding that the balancing of the magnitude of the risk against the costs in dealing with the risk should be measured against the notion that every grassy slope be signposted, fenced off and/or steps constructed adjacent to the slope.

What the learned trial Judge stated was:

> "To insist every grassy slope be signposted, fenced off and/or steps constructed adjacent to the slope would result in the public areas being pockmarked with signs, fences and steps leading nowhere in particular. Considerations of convenience and general amenity do not support a requirement on a local authority to signpost, fence or provide steps."

The learned trial Judge was simply testing the reasonableness of the scope of the duty sought to be imposed by the appellant on the respondent. That is one aspect of applying the test set out in Wyong Shire Council v. Shirt. There was no error in that process.

The appeal should be dismissed with costs.

DAVIES JA: I agree.

MUIR J: I agree.

DAVIES JA: Unless you have any objection to the order for costs, Mr Lee.

MR LEE: No, your Honour.

DAVIES JA: That will be the order of the Court.
