

# LIABILITIES AND DUTIES ASSOCIATED WITH TREES WHICH ABUT STREETS AND HIGHWAYS<sup>1</sup>

by Victor Merullo

The rights, duties and liabilities associated with trees which abut streets and highways is an area rich with case law. It would seem that less attention is given to trees which grow adjacent to the streets in either city or rural areas than is true for trees simply growing in the middle of a landowner's property. I believe a reason for this to be that often a great deal of confusion exists as to who the tree owners of these trees are as well as who is ultimately responsible for the care and upkeep of these trees.

Private landowners are not the only individuals involved in litigation resulting from trees growing near the streets and highways as I am sure you are aware. Municipalities and utility companies are also frequent parties to litigation arising out of incidents relating to trees. One such scenario involving municipalities relates to injuries caused to a motorist or possibly a pedestrian by a falling tree located between the curb and sidewalk of a city street. There exists a great deal of confusion as to whether public authorities or abutting landowners are responsible for injuries and damages which occur under these circumstances as evidenced by the opposing conclusions reached by Courts when entertaining those types of cases. The same can be said to be true for trees which merely abut the city and rural streets. Another area relating to municipalities with regard to trees which appears to be drawing greater attention involves governmental liability for a municipality's failure to properly maintain trees which obscure view at railroad crossings or at street or highway intersections. The dangers brought about by such failures of municipalities to properly maintain trees in this regard have given rise to successful suits by injured parties against cities for injuries sustained as a result of the cities' failure to perform their duties and obligations.

As I have already mentioned, public utilities are also often times made a party to litigation resulting

from injuries either caused to trees by the utility company or injuries caused to another individual as a result of some action taken by the utility company. This is particularly true with regard to trees growing along the street or highway since often the overhanging branches of these trees interfere with the maintenance and service of the public utilities and require cutting. Courts have reached differing conclusions concerning the right of public utilities to enter upon the land of an abutting owner's premises in order to cut down or trim trees which interfere with the maintenance and service of public utilities.

It is my hope to make you aware of some of the potential liabilities you may face arising out of incidents relating to trees so that you can take proper precautions to guard against the damages and liabilities that may result when injuries are caused to a person or property through actions relating to trees.

As I have previously mentioned litigation often arises resulting from injuries caused by a falling tree located between the curb and sidewalk of a city street. The courts in the United States have reached opposing conclusions with respect to the liability that may be imposed upon an abutting landowner for injuries resulting from the fall of trees or limbs located in the area between the sidewalk and curb. Where the city has the duty of maintenance and control of its streets and sidewalks and a tree which stood on the strip of ground between the sidewalk and street is blown down upon the sidewalk through no fault of the owner of the tree, the tree owner will not be held liable for injury since the city had control of the streets and sidewalk. The duty of keeping the sidewalks of such streets in a reasonably safe condition is the responsibility of the city.

However, in some jurisdictions, the view is taken that a property owner has some ownership or property interest in shade and ornamental trees

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along the sidewalk in front of one's property based upon the theory that the abutting owner has title to the center of the street, subject to a public easement. The view is taken that unless an abutting landowner is excluded by law or ordinance from removing a dangerous tree from the area between the sidewalk and the curb, the owner of the tree will be held liable for damages resulting from the fall of such a tree.

Given these two diverging views, it is very important that both the landowner and the municipality take the time to determine who is responsible for the ownership and maintenance of trees located between the street and sidewalk in order to take the necessary precautions to guard against injuries that may possibly arise therefrom.

Another area which I would like to discuss relates to the liabilities surrounding a municipality's failure to properly maintain trees which obscure view at railroad crossings and at street and highway intersections. You should be aware that the law governing whether a municipality can be held liable for damages for failing to remove trees and other vegetation at a railroad crossing or at a rural intersection is somewhat unsettled. However, there appears to be a recent trend in this area in finding municipalities liable for damages caused by their failure to maintain vegetation around intersections and railroad crossings.

The cases which allow liability on the part of the government generally involve States which have statutes and ordinances which describe a municipality's responsibilities regarding vegetation and public property. However, there are States in which Courts have held municipalities liable without relying on statutes or ordinances regarding vegetation or public property, instead, relying on principles of negligence. The States which do not find liability on the part of municipalities for their failure to maintain trees around intersections and railroad crossings generally base their opinions on the ground that a municipality has no duty to reduce vegetation obscuring an intersection view and that the growth of vegetation beside the street itself does not constitute a defect in the road. Also, another fact which you should be aware of is that sometimes courts will not find a municipality liable because the person injured was

contributorily negligent or because the accident was caused by another driver's negligence.

For the sake of clarity, the State of Illinois does have a statute which holds a municipality liable for injuries arising out of its failure to reduce vegetation obscuring motorists' view. A case in point is *Bentley v. Saunemin Township*, 83 Ill 2d 10, 46 Ill Dec 129, 413 NE2d 1242 (1980). In this particular case, a lawsuit was brought arising out of an automobile collision at the intersection of a township road and a state highway caused by the overhanging branches of a tree obstructing the vision of a stop sign on the road. The Court in *Bentley* allowed a verdict against both the township and the highway commissioner observing that a state statute made the maintenance of township roads a responsibility of its highway commissioner. The Court further held that (1) the township and its highway commissioner owed the motorist a duty of reasonable care in maintaining visibility of the stop sign; (2) and that the township and its highway commissioner failed to perform this duty entitling the motorist to recover damages. An important point in this case is that even though the Court recognized the existence of a statute calling for a duty to remove vegetation by the township, the Court went even further to note that there was no evidence that the driver, by virtue of prior travel in the area, might have known of the presence of the intersection or stop sign.

The importance of this point was brought out in a recent case in the State of Illinois, *Norvell v. Fancy Creek Township*, 130 Ill App3d 275, 85 Ill Dec 639, 474 NE2d 53. In *Norvell*, an action was brought against a township to recover for injuries sustained by a motorcyclist and his passenger in a motorcycle/automobile collision at an intersection of a state highway and township road wherein it was alleged that a stop sign was obscured by vegetation. The court in ruling in favor of the township in that case found that the motorcyclist was so inattentive that he would not have seen the stop sign even had it not been obscured and that he was going too fast to stop and, instead, decided it was best to attempt to cross the intersection as fast as possible. This case is important in the respect that the Court did take into consideration the acts of the motorist in comparing them to the actions or inactions of the township in failing to

properly maintain the intersection as required. Even though the township in that case was able to escape liability, the prudent advise to any municipality is to take the time to properly maintain trees which grow at or near intersections and railroad crossings. It will help to promote safety, beautify the area and, of course, help to avoid needless and costly litigation.

Another area of frequent litigation with regard to trees concerns the public utility companies. An issue which the courts have been often faced with is when must a public utility compensate a landowner for the destruction of his trees. This situation usually involves the right or power of a public utility to mutilate or damage shade trees of landowner growing adjacent to the streets of a municipality for the maintenance of service. The law in this area is that generally a public utility has no right or power to mutilate or damage shade trees growing on the streets of a municipality, or on any other highway without some authority granted to it by the municipality or public authority. It appears that any authority that a public utility would have to trim or cut trees on a landowner's property must come from the authorization of the city and its right to remove or trim trees where they interfere with a proper use of the street.

However, there seems to be a difference of judicial opinion concerning the rights and liabilities of a public utility as regarding the cutting or mutilating of shrubs and trees for the purpose of stringing wires or erecting poles pursuant to authority granted by the municipality or public authority. There have been some courts which hold that public authorities have no right to permit public utilities to remove or mutilate trees without compensation to the landowner where the fee to the highway is owned by the landowner. These courts recognize that a landowner has a property interest in such trees and that a municipality does not have the authority to empower a public utility to injure the trees of a landowner unless compensation is first made. On the other hand, if the trees are on a fee owned by a municipality, as in urban areas, then destruction by utility companies is not compensable.

Today's trend concerning what compensation is owed to a landowner for the destruction of his trees by a public utility appears to be based on a

test of reasonableness. The courts will first look to see if a public utility even had the authority to trim or remove trees, such authority given to it by the municipality. If such authority is present, the next determination to be made is whether or not an easement is present on the property owner's premises which would allow the public utility to intrude upon the owner's land. After finding that such an easement does, in fact, exist, the courts will then look to see if the intended use of the land by the utility company, subject to the easement, is an added burden on the property owner's land. In making this determination, the courts will look to see if the proposed intrusion is unreasonable.

It is generally held that when the authority exists allowing a public utility company to remove or trim trees which are necessary for the maintenance and installation of its facilities, that a landowner will not be able to recover damages to his trees so long as there is no unnecessary damage done to the landowner's property. The authority on this subject makes it clear that a landowner's property interest in his trees is subservient to a public utility company's right to remove and trim trees which interfere with the necessary and reasonable operations of the public utility company.

You should also be aware of an interesting situation which sometimes occurs when a public utility tries to avoid liability for the cutting down of trees on a landowner's property when the utility company hires an independent contractor to do the same. The courts invariably hold that if a public utility company does not itself have the authority to cut down trees along the street of a municipality, then it cannot simply escape liability by engaging the services of an independent contractor to do the work.

Therefore, whether you represent a private landowner, municipality or public utility you should take time to be aware of the rights, duties and liabilities concerning trees at all times so that you can take preventive measures to avoid costly and needless litigation.

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