

63399-6

63399-6

No. 63399-6-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

---

DOROTHY NARRANCE,

Appellant,

vs.

BALL METAL BEVERAGE CONTAINER CORP.,

Respondent.

---

APPELLANT'S REPLY BRIEF

---

ROB WILLIAMSON  
KIM WILLIAMS  
WILLIAMSON & WILLIAMS  
187 Parfitt Way SW, #250  
Bainbridge Island, WA 98110  
(206) 780.4447  
Attorneys for Appellant

FILED  
COURT OF APPEALS & CIVIL  
STATE OF WASHINGTON  
2009 SEP 22 AM 11:03

W

ORIGINAL

The brief of the respondent, Ball Metal Container Corporation, hereafter “Ball” demonstrates from the outside the fundamental error of analysis both by Ball and the trial court in granting the motion for summary judgment. Rather than deal with the undisputed facts, Ball suggests that the reason summary judgment was proper was the failure of appellant, Dorothy Narrance, hereafter “Narrance” to move her truck away from the dangerous area where she fell. Thus Ball claims,

“Why Ms. Narrance decided to walk in an unlit, ungraded area of natural vegetation when less than five feet from where she fell, there was an acre of well-illuminated smooth asphalt tarmac on which she could have performed her duties as truck driver-employee of Garner trucking, Inc (“Garner”) is something of a mystery.”

The undisputed facts are:

1. Narrance was a driver employed by Gardner Trucking, Inc.
2. On September 5, 2007, Narrance backed up her tractor unit and connected it to the trailer that she was assigned to transport that day.
3. The trailer had been parked so that its back protruded out into an ungraded area of vegetation. There is no evidence that the trailer was parked by an employee of Gardner; for purposes of summary

judgment it should be inferred that the trailer was parked there by Ball.

4. As required by law and Ball, Narrance exited the tractor cab in order to inspect the load in the trailer and seal the back doors. In order to do this, Narrance had to walk over the ungraded area of vegetation.
5. Narrance tripped in a hole that was not visible to her in the ungraded area.
6. There was no rule, regulation, custom, or practice that required Narrance pull her tractor forward after connecting it to the tractor and prior to inspecting the load and sealing the trailer doors. Indeed, the evidence demonstrated that Ball either directed, required, or authorized the placement of trailers so that drivers could not access the rear doors unless they walked onto the ungraded area of vegetation. Evidence also demonstrated that drivers virtually never pulled their trucks forward, a practice either authorized or condoned by Ball.
7. The hole in which Narrance tripped was subsequently filled.
8. The area where Narrance fell was dark and poorly illuminated.

Why Ball now claims it is a mystery that Narrance acted as she did is itself a bit mysterious. Ball knows exactly why Narrance did what she did. This was the custom and practice either countenanced if not required by Ball.

There is no evidence in the record that drivers did or could have moved their trucks forward fully onto the asphalt. Indeed, perhaps the trucks then would be in the way of the operations of ball. What is undisputed is that Narrance performed her job exactly as she and all other drivers had done it virtually every time they worked at Ball, and that this required them, in the evening, to walk on an unlit surface covered with vegetation obscuring potential dangers, such as a hole, rock or other impediment to the performance of their duties.

Ball wants it both ways. It wants to argue that the area where Narrance was obviously dangerous and it would have been wiser for her to move her truck forward, yet dispute that the area was dangerous at all. It doesn't work, and the decision of the trial court is wrong. This is not to say that a jury could be given evidence that it might have been possible for Narrance to move her truck forward, that Ball might have requested drivers to do so, or otherwise comment on the claim that she should have used the tarmac. That evidence, however, does not eliminate Ball's responsibility. At most it simply permits it to argue that Narrance was comparatively at fault.

The basic flaw in the ruling of the learned trial court was to determine, as a matter of law, that the area where Narrance was injured was safe. Or, put differently, that it as not dangerous. Yet looming in the background was the trial court's concern that Narrance should have moved her truck onto the tarmac, despite the lack of evidence that this could or should have been done. There was a reason why Ball either directed or

permitted Gardner to place all of its trucks so that their back ends did protrude out into the grassy area. If we set aside the concern about whether Narrance was comparatively negligent, then the question is whether as a matter of law the area where she fell was reasonably safe for an invitee and accordingly Narrance did not have the right to a jury to determine the issue.

Ball presents a chart in its response that is intended to persuade this Court that the cases upon which she relies are distinguishable. The chart actually demonstrates her central point: The question of whether a given condition is dangerous is not normally, to be decided as a matter of law. It is left for juries to make such determinations.

*Williamson v. Allied Group*, 117 Wn. App. 451, 72 P.3d 230 (2003) supports Narrance. The “danger” was a steep grassy slope. Whether it was easily avoidable or not does not go to the issue of danger. Imagine in *Williamson*, for example, that the plaintiff was required because of construction, to walk on a different sidewalk than her usual ingress and egress, and while walking on that different sidewalk, she fell. Does that mean, as a matter of law, that she has a claim because she was forced to walk somewhere else? Or must there be a separate finding, made by a jury, that the area where she fell was dangerous? In *Williamson* the Court of Appeal impliedly found that a mere steep grassy area was potentially dangerous and that a tenant who walked on it might have a claim. Just as the plaintiff in *Williamson* had a right for a jury to make a determination about whether

there had been negligence, so too does Narrance. It is simply wrong to conclude as a matter of law that an unlit area of vegetation in which there is a hidden hole is safe.

Dated this 21st day of September 2009.

WILLIAMSON & WILLIAMS



---

Rob Williamson, WSBA #11387

Kim Williams, WSBA #9077

Attorneys for Appellant

**CERTIFICATE OF SERVICE**

Lisa Hanlon declares:

I certify that on the 21st day of September, 2009, I caused a copy of the foregoing APPELLANT'S REPLY BRIEF to be served via electronic mail and U.S. Mail upon:

Scott C. Wakefield  
Todd & Wakefield  
1700 Century Square  
1501 Fourth Avenue  
Seattle, Washington 98101

I declare under penalty and perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED THIS 21<sup>st</sup> day of September, 2009 at Bainbridge Island, Washington.

  
\_\_\_\_\_  
Lisa Hanlon