



Passion. Preparation. Persistence.

Volume 6, Issue 19

THE BASSETT BULLETIN™

COURT SHOTS DOWN BYSTANDERS' CLAIM

In a recent opinion, *Jones v. City of Houston*, No. 01-08-00905-CV, 2009 Tex. App. LEXIS 6852 (Tex. App.-- Houston [1st Dist.] Aug. 27, 2009), the Court of Appeals denied the bystander claims of two siblings who sued the City of Houston for the negligent maintenance of a culvert. The two siblings saw emergency personnel pull their brother, who had drowned, out of the culvert.

The Court stated that the siblings did not see their brother drown, even though they went to the scene where they saw his body taken out of the water and later placed in an ambulance. The Court of Appeals stated that although they were informed of the accident, went to the scene, and saw the effect of the accident, they did not suffer shock as a result of a direct emotional impact from a “*sensory and contemporaneous*” observance of the accident.

FACTS OF THE CASE

On June 25, 2004, Loren Jones, the sister of the deceased, was at home with her mother when a representative of the City called their home informing the mother that Logan Jones, her brother, was sucked into a drainage ditch and could not be found. Loren testified, in her deposition, that she saw her mother on the floor crying. Loren then immediately called her brother, Landon, and told him to come home. When Landon arrived, the three of them went to the culvert, where they saw fire trucks everywhere. The city police officers were trying to keep everyone away from the culvert. A short time later, a city diver told Loren that Logan might be stuck in an air pocket and holding on. However, the city diver's attempts to locate Logan were unsuccessful.

After about an hour, Loren saw Logan's body float out into the bayou faced down in the water and not moving. Landon turned Loren's head around so she could not see Logan's body come up, but Loren did glimpse a rescue worker trying to resuscitate Logan. She eventually saw the rescue workers take Logan away in an ambulance. Although Logan had been in the culvert for over an hour, Loren believed that Logan was alive.

Landon, the older brother, upon receiving a telephone call from his sister, drove to his parents' house and picked up his mother and sister. Landon was at the scene when city officials tried to find Logan. He also testified that over an hour later, his brother floated out of the drain. Landon saw his brother's body face down and not moving. He then heard his sister scream and saw her collapse. Landon also saw rescue workers trying to resuscitate his brother and place him in an ambulance.

After the incident, Loren Jones and Landon Jones filed suit, via bystander claims, for the wrongful death of their brother against the City of Houston for negligently creating and maintaining a culvert.

The City of Houston argued that the Jones siblings were not bystanders because they were told about the accident when they were at the parents' house. The City asserted that it was clear that Logan had drowned sometime before the siblings arrived at the scene. The City then filed a Motion for Summary Judgment on this issue and the trial court granted the City's Motion for Summary Judgment. The Plaintiffs appealed the trial court's ruling.

THE COURT OF APPEALS' DECISION

The Court of Appeals upheld the trial court's decision. In coming to their decision, the Court of Appeals cited the Texas Supreme Court decision in *United Servs. Auto Ass'n v. Keith*, 970 S.W.2d 540 (Tex. 1998), which deals with the required elements for recovery on a bystander claim. The three elements for a bystander claim are as follows:

- (1) The Plaintiff must show that he was "located near the scene of the accident, as contrasted with one who was a distance say from it;"
- (2) The Plaintiff must show that he "suffered shock as a result of a direct emotional impact upon the Plaintiff from a sensory and contemporaneous observance of the accident, as contrast with learning of the accident from others after its occurrence;" and
- (3) The Plaintiff must show that he and the victim "were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship."

The Plaintiff cited various cases which discussed instances where the injury-producing events took some time to unfold. The Plaintiffs stated that there are various cases which clearly established that family members, who learn of a situation before reaching the scene and are present as the events unfold when the injuries are ultimately realized, can qualify as bystanders under Texas law.

The Court of Appeals, however, cited *Keith*, where the Texas Supreme Court denied a plaintiff's bystander claim, because the plaintiff did not establish that she had a contemporaneous perception of the accident. Thus, they focused on element two of the bystander elements.

The majority in the Court of Appeals noted that the Jones siblings did not see their brother drown, although they did go to the scene where they saw Logan's body taken out of the water and later transported to the hospital. The Court of Appeals focused on the fact that the Jones family members were informed of the accident before they went to the scene. After going to the scene is when they saw the effect of the accident. Thus, because there was no contemporaneous perception of the accident, the Court of Appeals upheld the trial court's ruling on the City's Motion for Summary Judgment.

It is important to know that there was a dissenting opinion. Justice Elsa Alcala noted that there was a dispute as to when the Jones siblings had a contemporaneous perception of the accident. She indicated that the majority's opinion took too narrow of a view with which she disagreed. Justice Alcala believed that the Plaintiffs met element two of their claim, and thus, the City's Motion for Summary Judgment should have been reversed and the case should have been remanded for trial.

WHAT DOES THIS MEAN?

This Court of Appeals has taken a narrow view of what “contemporaneous observance of accident” means. Thus, a bystander’s claim may be limited or denied when a bystander Plaintiff finds out about the occurrence of an event before actually seeing the event. Thus, if you have a lawsuit with a bystander claim, here are some things you should ask:

- (1) Was the Bystander at the location where the accident/incident took place? If not, proximity might prevent the Bystander from recovering.
- (2) Was there a “contemporaneous observance” of the accident? Did the Plaintiff see the event take place or did the Plaintiff learn of the incident from someone else? According to the First Court of Appeals, seeing the event as it happens is very important. Getting this information from a deposition, recorded statement, or other form of discovery will be very helpful.
- (3) Were the victim and Plaintiff related? If not, the relationship element has not been met. Courts have ruled that step-parents and step-siblings can recover, but have been reluctant to give bystander claims to individuals who are not. Courts have generally allowed recovery to husbands, wives, parents, children, grandparents, siblings and those persons who occupy a legitimate position in “loco parentis” (in the place of a parent).

The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CHRISTINE S. JOHNSON**
- **ROBERT L. MCGEE, JR.**
- **JAMIE J. MCKEY**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**



Information regarding *The Bassett Bulletin*TM is available from **Angie Stevenson** (astevenson@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

*The Bassett Bulletin*TM is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
