IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 16, 2023 Session

REX SULLIVAN EX REL. ROSE SULLIVAN v. JAMES CARDEN, ET AL.

Appeal from the Circuit Court for Rhea County
No. 2019-CV-339 Justin C. Angel, Judge

No. E2022-01234-COA-R3-CV

This appeal concerns a claim of negligence. Rex Sullivan, individually and in his capacity as the Administrator Ad Litem for his deceased wife ("Plaintiff"),[1] filed a complaint in the Rhea County Circuit Court ("the Trial Court"), seeking damages from James Carden and Carden Trucking Company ("Defendants") for injuries Plaintiff suffered in a November 2018 car accident. Plaintiff alleged that his accident was caused by Defendants' failure to remove excessive mud they had deposited onto the rural road he drove on. The Trial Court granted summary judgment in favor of Defendants. Plaintiff appeals. We affirm the Trial Court's grant of summary judgment with respect to Plaintiff's claim for punitive damages, which Plaintiff has not appealed. Otherwise, given the existence of genuine issues of material fact such as how much mud was deposited onto the road and the foreseeability of the risk of injury, we reverse the judgment of the Trial Court and remand for further proceedings consistent with this Opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed, in Part, and Reversed, in Part; Case Remanded

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and W. NEAL MCBRAYER, JJ., joined.

John W. Chandler, Jr. and Patrick A. Cruise, Chattanooga, Tennessee, for the appellant, Rex Sullivan, individually and in his capacity as the Administrator Ad Litem for his deceased wife, Rose Sullivan.

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[1] Rex Sullivan and Rose Sullivan were the original plaintiffs in this case. However, following Rose Sullivan's death, a third amended complaint was filed amending the plaintiff to include Rex Sullivan in his individual capacity as well as his capacity as the Administrator Ad Litem on behalf of Rose Sullivan.

Sean W. Martin and Michael J. Petherick, Chattanooga, Tennessee, for the appellees, James Carden, individually and/or d/b/a James Carden Trucking.

OPINION

Background

Defendants entered into a contract with Resolute FP US, Inc. ("Resolute")[2] to harvest timber on a 35-acre tract located on Liberty Hill Road in Rhea County and to deliver it to Resolute's papermill. There is a gravel access road that extends from Liberty Hill Road throughout the entirety of the logging site. In his pleadings, Plaintiff refers to the access road as "partially graveled." In his response to Defendants' statement of undisputed material facts, Plaintiff acknowledged that the graveled road was not a dirt road; that it was well maintained; that any dirt at the logging site was located to the sides of the gravel access road; and that all employees parked their personal vehicles "off the side of Liberty Hill Road."

Defendants had cut and transported timber from the logging site between November 13, 2018 and November 20-21, 2018. James Carden visited the site each of those days while logging operations were taking place. The heavy logging equipment—bunchers, skidders, and loaders—operated in the mud on the property, but the trucks and trailers used by Defendants for logging services and transporting the equipment drove only on the gravel access road. On November 21, 2018, Defendants loaded the logging equipment onto lowboy trailers and transported them to another tract owned by Resolute that was located approximately a mile down the road. It is undisputed that the skidders, bunchers, and loaders never came into direct contact with Liberty Hill Road.

On the morning of November 23, 2018, Rex Sullivan had a car accident on Liberty Hill Road. He was driving down Liberty Hill Road and as he went around a curve, he hit a "muddy place" on the road. According to Mr. Sullivan, his vehicle left the road, hit an embankment, and rolled over in "not even a split second." An individual living nearby the accident, Jackie Smith, came to the scene, called for emergency services, and took care of Mr. Sullivan until an ambulance arrived. After Mr. Sullivan arrived at the hospital, he was diagnosed with cervical fractures to his neck and underwent surgery for his injuries shortly thereafter.

Mr. Sullivan claims that the mud, dirt and/or debris on Liberty Hill Road close to the logging site entrance caused him to lose control of his automobile. He blames

[2] Resolute was added as a party defendant in Plaintiff's second amended complaint, but the claims against it were dismissed in an agreed order granting Resolute's summary judgment motion.

Defendants for causing the mud, dirt, and/or debris to be on the road when they picked up mud and debris on their tires which dropped onto the roadway. As a supplemental exhibit to his statement of undisputed material facts, Plaintiff included photographs taken by Jackie Smith that Plaintiff alleges are from the scene of the accident on the day the accident occurred. Plaintiff states that the photographs had been darkened by Plaintiff's counsel to "show the patch of mud at the end of the access road to the 35-acre tract of land from which the Carden Defendants hauled timber and/or heavy logging equipment onto Liberty Hill Road during the week (i.e. from November 13, 2018 through November 21, 2018) prior to Mr. Sullivan's November 23, 2018 wreck." Plaintiff admitted in response to Defendants' statement of material facts that he did not observe any of the mud, dirt, or debris being deposited on the roadway.

Jackie Smith testified in a deposition that he observed mud "streaming" out onto Liberty Hill Road. In the deposition, he states as follows in relevant part: "They were logging and like the trucks where they're coming out, you know, all the mud was streaming out in the road. That's -- that's what you can see right here where they're coming out, making the turn." Defendants, however, deny that Mr. Smith testified that the mud emanated from the access road at the logging site. Mr. Smith also testified that he had observed a woman driving on Liberty Hill Road on the day before Mr. Sullivan's accident. He stated that he observed her slide on mud on the roadway without wrecking. Defendants, however, state that his testimony does not say it was the exact same patch of mud. Following the accident, Mr. Smith told law enforcement that Mr. Sullivan's vehicle "slid around on this ice." The sheriff's deputy kicked what he thought was concrete, and Mr. Smith informed the deputy that it was frozen mud.

In November 2019, Plaintiff filed a complaint in the Trial Court seeking damages from Defendants for injuries he sustained in the November 2018 car accident. Plaintiff alleged in his complaint that Mr. Sullivan was injured as a direct result of Defendants' reckless and negligent actions. Specifically, Plaintiff alleged, *inter alia*, that Defendants created a hazardous condition on the roadway; failed to take immediate action to remove the hazardous condition it created from the roadway; knew or should have known about the hazardous road conditions; failed to exercise ordinary care under the circumstances; violated Tenn. Code Ann. § 55-8-170[3]; and committed negligence per se. According to

[3] Tenn. Code Ann. § 55-8-170 provides as follows:

> (a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon the highway.
>
> (b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
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> (d) A violation of this section is a Class C misdemeanor.

Plaintiff, Defendants' actions were the direct and proximate cause of Plaintiff's injuries. Defendants filed an answer denying the substantive allegations against them.[4]

Following discovery, Defendants filed a motion for summary judgment, arguing that Plaintiff could not prove that the mud, dirt, or debris that he alleged caused his injuries was put on the road by Defendants. Additionally, Defendants alleged that even if they had caused the condition on the roadway, Plaintiff could not prove that the mud was a dangerous condition such that a duty would arise on behalf of Defendants.[5] Plaintiff filed a response to the summary judgment motion, arguing that he was able to prove that the mud in the roadway that caused his accident was deposited there by Defendants' tractor-trailer trucks that had repeatedly entered and exited the "partially graveled access road," and that the heavy logging equipment had been used in the "extremely wet and muddy" tract of land that Defendants were logging.

In August 2022, following a hearing, the Trial Court entered an order granting Defendants' motion for summary judgment and stating that the "legal grounds for the Court's ruling upon that motion are contained in the transcript of the August 2, 2022 hearing . . . and incorporated by reference herein." At the hearing, the Trial Court ruled as follows:

> Well, it definitely is a very interesting case, for sure enough. I remember when the case was first filed, and reading it, and dealing with some preliminary matters in the case and it's a very unique set of circumstances and if you don't live in the rural areas, you probably wouldn't understand it. If you're -- if you live in a city, you probably would have no clue what we're even talking about, but, you know, looking at pictures and knowing the area which this occurred, it's a very common occurrence for farm vehicles, logging vehicles, any sort of construction vehicle that leaves the roadway, goes off in a field or a logging plot and enters back on the road, there's going to be mud and debris, dirt, that just happens. It's -- mud, itself, is naturally occurring and then this activities that we're speaking of in rural areas is very naturally occurring. It's -- virtually every day it occurs. The court is not convinced that the mud is inherently dangerous substance. It's so common

[4] In their answer, Defendants alleged comparative fault and named Rhea County, which prompted Plaintiff to file his first amended complaint adding Rhea County as a party. The Trial Court subsequently granted Rhea County's motion to dismiss and dismissed all of Plaintiff's claims against it.

[5] Additionally, Defendants alleged that Plaintiff's claims would not succeed for punitive damages because he could not prove that Defendants acted maliciously, intentionally, fraudulently, or recklessly. Plaintiff conceded this point. The Trial Court granted summary judgment in favor of Defendants regarding the punitive damages, and that issue is not on appeal.

> on the roadways, especially these, you know, back country roads. Furthermore, the court finds that the defendant did not have a duty to remove the mud from the road and that opposing[sic] a duty to clean the mud off the road or to clean their vehicles before they enter the roadway would be unduly burdensome and virtually impossible and/or practical to impose upon trucks. So, they'd have to pull their vehicle to the edge of the road and wash it off with a water hose, which creates another big mud mess and then they pull right back out on the road, or they get a hose somehow, get access to enough water and water pressure to clean the highway off in the rural area where there's -- you know, there's no (Inaudible) water source or ability to even do so. It's just it's very impractical and I can see, you know, how an accident could occur, but -- and it did occur in this case, but it's not the type of behavior that is causing unreasonably dangerous situation all the time and applying the right standard, the court finds there's no genuine issue, material facts at this time to go forward to the jury and I'll grant the motion for summary judgment.

Plaintiff timely appealed to this Court.

Discussion

Plaintiff raises the following issues for this Court's review, which have been restated as follows: 1) whether the Trial Court erred by granting summary judgment in favor of Defendants when the facts demonstrate that Defendants created an unreasonable risk of harm by depositing a significant amount of mud on the road, which subsequently caused Plaintiff's car accident; and 2) whether the Trial Court erred by granting summary judgment in favor of Defendants if Defendants had violated Tenn. Code Ann. § 55-8-170 by depositing a significant amount of mud on the road, which subsequently caused Plaintiff's car accident.

Regarding the standard of review for cases disposed of by summary judgment, the Tennessee Supreme Court has instructed:

> Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. We review a trial court's ruling on a motion for summary judgment de novo, without a presumption of correctness. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997); *see also Abshure v. Methodist Healthcare–Memphis Hosp.*, 325 S.W.3d 98, 103 (Tenn. 2010). In doing so, we make a

fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied. *Estate of Brown*, 402 S.W.3d 193, 198 (Tenn. 2013) (citing *Hughes v. New Life Dev. Corp.*, 387 S.W.3d 453, 471 (Tenn. 2012)).

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[I]n Tennessee, as in the federal system, when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with "a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial." Tenn. R. Civ. P. 56.03. "Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record." *Id*. When such a motion is made, any party opposing summary judgment must file a response to each fact set forth by the movant in the manner provided in Tennessee Rule 56.03. "[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56]," to survive summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, "set forth specific facts" *at the summary judgment stage* "showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.* [*v. Zenith Radio Corp.*], 475 U.S. [574,] 586, 106 S.Ct. 1348 [89 L.Ed.2d 538 (1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07. However, after adequate time for discovery has been provided, summary judgment should be granted if the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06. The focus is on the evidence the

> nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.

Rye v. Women's Care Ctr. of Memphis, MPLLC, 477 S.W.3d 235, 250, 264-65 (Tenn. 2015).

We first address whether the Trial Court erred by granting summary judgment in favor of Defendants if the facts demonstrate that Defendants created an unreasonable risk of harm by depositing a significant amount of mud on the road, which subsequently caused Plaintiff's car accident. Plaintiff contends that the Trial Court erred when it granted summary judgment in favor of Defendants when they deposited a "significant amount of mud" on the roadway resulting from their logging operation and failed to remove the mud from the roadway. Plaintiff cites to the case of *Radnor Water Co. v. Draughon*, 89 S.W.2d 186, 188-189 (Tenn. Ct. App. 1935), which involved a situation where the defendant company left clay on the road that turned to mud after it rained. The jury in *Draughon* found that the defendant had left the highway in such a condition that an accident should have been anticipated by the defendant. *Id*. at 189. In *Draughon*, this Court stated that the defendant company "was bound, after completion of the work, to restore the highway to a condition of reasonable safety." *Id*. (Citations omitted). Plaintiff also cited to a Texas case, *Kirby Lumber Corp. v. Walters*, 277 S.W.2d 796, 799 (Tex. Civ. App. 1955), which held that the defendants were entitled to use the highway with their hauling and travelling but that they had a duty while using the highway to not willfully or negligently injure others also using the highway and of not willfully or negligently creating a dangerous condition without taking precautions to warn and safeguard other users from the condition. Plaintiff also cites to another Texas case, *LaRue v. Chief Oil & Gas, L.L.C.*, 167 S.W.3d 866 (Tex. App. 2005), and a Kansas case, *Cuddy v. Tyrrell*, 171 Kan. 232, 232 P.2d 607 (1951), in support of his argument that Defendants owed a duty of care to remove excessive mud from the roadway or to warn of its existence. Based on the foregoing, Plaintiff argues that Defendants owed a duty of care to remove the significant amount of mud they had deposited on the roadway because it created a foreseeable risk to motorists.[6]

Defendants contend that they had no duty to remove the mud from the roadway or to warn of the road's condition. According to Defendants, Plaintiff cannot prove that the

[6] In his principal brief, Plaintiff also points to statements made by James Carden in his deposition that if mud had fallen from his logging equipment or tractor-trailers due to Defendants' operations, they had a responsibility to clean it up. In their brief, Defendants argue that James Carden's testimony regarding whether Defendants owed a duty of care is inadmissible because duty is a question of law, not of fact, and he is a lay witness, not an expert. In his reply brief, Plaintiff acknowledges that James Carden's deposition testimony on this subject is neither relevant nor admissible into evidence at trial. We express no opinion on this.

mud was deposited on the roadway by Defendants and his assertion of such is speculation. It is undisputed that Defendants' trucks were only used on the gravel access road and those were the only equipment that came into contact with the roadway. They also assert that logging operations were not conducted for a couple of days prior to Plaintiff's accident and that is was common to see other logging trucks driving on that roadway.

Defendants argue that even if Plaintiff could prove that Defendants had deposited the mud on the roadway, he cannot prove that the mud was "unreasonably dangerous or posed a foreseeable risk of harm." According to Defendants, mud, dirt, and debris are substances encountered by individuals often in rural areas and, by itself, does not create an unreasonable risk of harm. Defendants further point out that Plaintiff was aware of the mud on the road prior to the accident, and if Defendants could foresee a risk to the roadway from the mud, that risk should also have been recognizable to Plaintiff. As such, Defendants aver that they "did not owe any duty to remove it from the road or warn of its existence." Defendants emphasize that whether a duty exists is a question of law.

In response to the caselaw cited by Plaintiff in his brief, Defendants point out that all but one case is from a different jurisdiction and thus not binding on this Court. They assert that those cases are also unpersuasive to the current case. In *Walters* and *Cuddy*, argue Defendants, there were "unusual" and "large" accumulations of mud on the road, which is distinguishable from the present case. Defendants state that in *LaRue*, the defendant had not raised the issue of duty in its summary judgment motion and the appellate court ultimately affirmed the grant of summary judgment because the plaintiff failed to prove that the mud on the road was the proximate cause of the accident. In response to *Draughon*, the Tennessee case cited to by Plaintiff, Defendants argue that it is both procedurally and factually distinguishable from the present case because *Draughon* involved a jury verdict and the issues in *Draughon* were not raised in this appeal. They further state that the area where *Draughon* occurred was not rural like the present case and that the mud on the road in *Draughon* was intentionally placed on the road by the water company while performing work to install a water main. They argue that this case is distinguishable because it does not involve intentional conduct and that the sole allegation by Plaintiff is that Defendants and their employees tracked mud onto the roadway. Finally, Defendants contend that if any mud was deposited on Liberty Hill Road, the duty to remove that mud fell solely on Rhea County under Tennessee law, not Defendants.

Defendants are correct in that whether a duty exists is a question of law. *See Riggs v. Wright*, 510 S.W.3d 421, 427 (Tenn. Ct. App. 2016) ("Whether a defendant owes a duty to a plaintiff in any given situation is a question of law for the court.") (Citation omitted). Nevertheless, in the appeal at bar, there are questions of fact relevant to the legal determination of whether a duty existed. Namely, how much mud was spilled onto the road is a relevant question of fact. For example, one quarter of an inch could well be

materially different to six inches of mud in terms of the foreseeable risk of injury to others. Likewise, Plaintiff presented proof that his car slid on the frozen mud. *See Burroughs v. Magee*, 118 S.W.3d 323, 328 (Tenn. 2003) ("All persons have a duty to use reasonable care to refrain from conduct that will foreseeably cause injury to others.") (Citation omitted). Along with the questions of how much mud was spilled and did it freeze into frozen mud, the foreseeability of the risk of injury is a question of fact. *See Richardson v. Trenton Special Sch. Dist.*, No. W2015-01608-COA-R3-CV, 2016 WL 3595563, at *6 (Tenn. Ct. App. June 27, 2016) ("Foreseeability is ordinarily a question of fact.") (Citation omitted), *no appl. perm. appeal filed*. While rural roads often have some mud on them, how much mud and where it is matters in determining whether those who spilled the mud have a duty to clean it up. The Trial Court found that a duty to prevent mud from spilling onto the roadway or removing the mud would be "unduly burdensome." However, there was no evidence presented for this conclusion. It is not an obvious and unavoidable conclusion and may not be presumed.

There also exists in this case a genuine issue of material fact regarding whether Defendants deposited the mud onto the roadway in the first place. There was testimony that mud was "streaming" from trucks and that the mud was right at the access road. We note further that there was no proof presented of any other logging operations occurring in the area in the relevant timeframe. Regarding Rhea County, while it may have had a duty to keep public roads clear, there is no proof that Rhea County was ever put on notice of the condition of the roadway. If Defendants created an unreasonably dangerous condition on the roadway, the existence of a duty by Rhea County would not relieve Defendants of also having a duty to remove what they put there. As to Plaintiff's degree of responsibility for his own injuries, comparative fault would be at issue as to whether Plaintiff should have known about the condition of the roadway.

All in all, the fact that some amount of mud is a common feature on rural roads is not dispositive of this case. In his reply brief, Plaintiff states: "Tennessee residents, who are driving on a rural road, have the same legal rights as Tennessee residents, who are driving on an urban road." Plaintiff is right about that. Given the existence of genuine issues of material fact in this case, such as how much mud was spilled, did the mud freeze, and whether Defendants spilled the mud, the Trial Court erred in granting summary judgment to Defendants. We reverse the Trial Court's judgment and remand for further proceedings consistent with this Opinion.

The second and final issue we address is whether the Trial Court erred by granting summary judgment in favor of Defendants if Defendants had violated Tenn. Code Ann. § 55-8-170 by depositing a significant amount of mud on the road, which subsequently caused Plaintiff's car accident. Plaintiff argues that the Trial Court erred by finding that Tenn. Code Ann. § 55-8-170 applies only to "unnatural" objects. According to Plaintiff,

the Tennessee statute at issue is identical to an Arkansas statute, and the Arkansas Court of Appeals determined that the relevant statute also included "natural" objects such as mud, gravel, oil, and rocks. *See* Ark. Code Ann. § 27-51-1405[7]; *McKim v. Sullivan*, 2019 Ark. App. 485, 588 S.W.3d 118. The Arkansas Court of Appeals in *McKim* held that the plain language of the statute makes no reference to "unnatural" materials but instead prohibits a person from depositing "any other substance" likely to injure a person or vehicle on the highway. *Id*. at 128-29. As such, Plaintiff argues that Defendants had a duty to remove such excessive mud from the roadway.

Defendants disagree with Plaintiff's interpretation of the Trial Court's ruling and argue that the Trial Court did not rule that Tenn. Code Ann. § 55-8-170 applies only to unnatural objects. Instead, Defendants argue that "the trial court stated that mud on a road is not an 'unreasonably dangerous situation **all the time** . . . .' (T.E. 34:23-24) (emphasis added)." Defendants clarify that the Trial Court's ruling "acknowledges that mud on a road could constitute an unreasonably dangerous condition under certain circumstances; just not under the facts and circumstances in this case." Defendants also distinguish the *McKim* case relied on by Plaintiff because the Court specifically limited its holding to its conclusion that the statute at issue applied to both natural and unnatural objects and had not ruled that a duty existed to remove the mud that the defendants left on the road. *McKim*, 588 S.W.3d at 129. Instead, Defendant argues that the case of *Bowie v. Missouri Pacific Railroad Co.*, 262 Ark. 793, 561 S.W.2d 314 (1978), is more analogous to the present case and interprets the same statute as in *McKim*. In *Bowie*, the Arkansas court affirmed a directed verdict in favor of the defendant and found that the statute could not provide relief because there was no showing that the yellow substance similar to soybean meal was likely to injure a person or vehicle on the highway or that the substance was destructive or injurious. *Id.* at 316. As Defendants point out, the court compared the yellow substance to being "no different from the clay that often drops from vehicles in a rural community when crossing a railroad track during the winter months." *Id*. As such, Defendants argue that the Trial Court was correct in dismissing Plaintiff's claim of negligence per se.

In his reply brief, Plaintiff states that "in the event that this Court is inclined to reverse the Trial Court's grant of a Summary Judgment to the Carden Defendants, it would be appropriate that this Court include in its Opinion whether or not it agrees with the Arkansas Court of Appeals decision in *McKim v. Sullivan*. . . ." However, as Defendants note, the Trial Court never ruled that Tenn. Code Ann. § 55-8-170 applies only to "unnatural objects." Indeed, the Trial Court did not explicitly rule on the application of

[7] Ark. Code Ann. § 27-51-1405 provides as follows in pertinent part:

(a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon the highway.

(b) Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove it or cause it to be removed.

Tenn. Code Ann. § 55-8-170. In addition, Defendants did not argue that Tenn. Code Ann. § 55-8-170, which incidentally is a criminal statute, applies only to unnatural objects. Plaintiff's argument based upon Tenn. Code Ann. § 55-8-170 is superfluous. We also decline to opine on the Arkansas case of *McKim v. Sullivan* as it is unnecessary to do so. Tennessee law is sufficient to decide this appeal. We already have found that genuine issues of material fact exist in this case; those factual disputes are not resolvable at the summary judgment stage.

Conclusion

We affirm the Trial Court's grant of summary judgment with respect to Plaintiff's claim for punitive damages. Otherwise, we reverse the judgment of the Trial Court, and this cause is remanded to the Trial Court for collection of the costs below and further proceedings consistent with this Opinion. The costs on appeal are assessed against the Appellees, James Carden, individually and/or d/b/a James Carden Trucking.

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D. MICHAEL SWINEY, CHIEF JUDGE