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

WANDA DENISE WARE v. METRO WATER SERVICES, A DIVISION/AGENCY OF METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE

Appeal from the Circuit Court for Davidson County
No. 20C-1477 Joseph P. Binkley, Jr., Judge

No. M2022-01114-COA-R3-CV

Plaintiff sued for personal injuries under the Tennessee Governmental Tort Liability Act, alleging she had experienced a fall due to an unsecure water meter valve cover located in her sister's yard. Following a bench trial, the trial court entered an order finding that Plaintiff had not met her burden of proof. Although Plaintiff appeals the dismissal of her case, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

Donald Andrew Saulters, Nashville, Tennessee, for the appellant, Wanda Denise Ware.

Andrew David McClanahan and Angela Denise Williams, Nashville, Tennessee, for the appellee, Metropolitan Government of Nashville & Davidson Co.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Wanda Ware ("Ms. Ware") filed the present case under the Tennessee Governmental Tort Liability Act to recover for injuries allegedly caused by the water services department of the Metropolitan Government of Nashville, Davidson County, Tennessee ("Metro"). In her complaint, which was filed in the Davidson County Circuit Court, Ms. Ware specifically alleged that she was injured on September 7, 2019, when she visited her sister's residence and "stepped in a hole in the yard which should have been

covered by . . . [a water meter] valve cover." Ms. Ware averred that Metro had previously performed work on this water meter "[j]ust prior" to the September 7, 2019, accident and had "failed to properly install the cover back." She further submitted that, "[b]ut for Metro's negligence in failing to properly secure the valve cover, this accident would not have happened."

When the matter was eventually tried, the trial court heard the testimony of multiple witnesses, including Ms. Ware. For her part, Ms. Ware testified to her experience of the September 7, 2019, accident and the injuries she claimed to suffer from in its wake. Regarding the accident specifically, Ms. Ware described how she had suffered a fall as she had walked across the yard upon the conclusion of a visit at her sister's residence, stating: "I just dropped into something and fell. I didn't even see it coming and didn't -- and I'm looking straight ahead just like right here." According to her, the water meter cover (or "lid" as it has also frequently been referred to) flipped up when she stepped on it.

The trial court also heard testimony from multiple Metro employees. The first Metro employee to testify was Jason Johnson ("Mr. Johnson"), Metro's designated corporate representative. At the time of trial, Mr. Johnson was an "area lead." He previously had been a meter reader. According to his testimony, after a Metro worker has taken a lid off of a water meter to make a repair, they have to make sure the lid goes back on, and they are supposed to step on it and make sure it is secure. Mr. Johnson testified that the process of lifting a water meter lid and putting it back was not complicated. He testified that the iron lid covers fit into recessed lips of the water meter boxes and noted that, if the lids are put back correctly, they are not supposed to pop off. He agreed that it is "standard" to make sure the lids are flush and fit squarely within the rims, and he further agreed that Metro employees are trained and know to put a foot on a lid to make sure it is secure before leaving. He testified that Metro trains its workers how to put valve covers back on for safety purposes. As indicated from our overview of other trial proof below, this standard routine practice for Metro workers was echoed by other witnesses in the case.

Much of the testimony at trial centered on how grass near water meter boxes may, or may not, impede workers from properly securing lids upon the completion of a service call. According to Mr. Johnson, it is common for grass to grow up around a valve cover in a yard. Regarding the subject of grass near meter boxes generally, he testified in part as follows:

> A lot of times, the grass that lays over the top of a meter box, you can [peel] it back. And, obviously, it's not our job to trim grass, so we wouldn't. So is it possible that you could [peel] it back and see that it's going to be securing the lid? Yes.

As indicated by the following colloquy, Mr. Johnson explained that, as it concerned Metro policy, the emphasis is on just making sure lids are safe and secure when Metro leaves a

site:

> Q. Now, is there any policy or procedure at Metro Water Services that an employee has to dig out a frame any certain way when they go out and encounter where grass or things have grown over the water meter cover?
>
> A. No. We just want the lid safe and secure when we leave.
>
> Q. So if an employee could simply just push the grass out of the way and put the lid back on the frame, that's acceptable, isn't it?
>
> A. Yes.
>
> Q. If the employee has to pull a few weeds out by hand, that would be acceptable, wouldn't it?
>
> A. Yes.
>
> . . . .
>
> Q. But in every instance where you encountered grass growing over a water meter lid, that didn't mean you automatically had to go to the truck and pull out the shovel or the dig bar, did it?
>
> A. No.
>
> Q. If you could get that lid squarely back in the frame by simply pushing the grass out of the way or pulling some grass out of the way or scraping some dirt from around the frame, that's acceptable to Metro Water Services, isn't it?
>
> A. Yes.
>
> Q. The main objective is to make sure that lid gets in the frame however that may be done; is that true?
>
> A. Yes, that's true.

Mr. Johnson also provided testimony concerning William Long ("Mr. Long"), a Metro employee who had serviced the water meter at Ms. Ware's sister's residence on July 11, 2019, approximately two months prior to Ms. Ware's accident. Mr. Johnson testified that Mr. Long did twenty calls a day or more on average, doing thousands of work orders per year. He testified that there was no indication that the lid was broken at the time Mr.

Long made his repair and that the lid also appeared to be fine two years later. He also testified that, if a car or lawnmower caused a lid to be jarred out of its frame, there might not necessarily be any evidence of that on the lid itself. When asked if he thought there was "any way on earth" that Mr. Long had left the lid looking like it looked in a photograph represented to have been taken on the day of the accident, Mr. Johnson responded, "No," and he testified that he never had a report of Mr. Long not putting a lid back on correctly.

According to Mr. Johnson, there are no alarms to alert Metro if a water meter lid has moved or shifted. His testimony indicated that, if a Metro employee finishes their work and determines that it is okay, there is no way to know about a problem unless Metro receives a complaint. Of note, he testified that Metro did not receive any complaints about the water meter at issue here between July 11, 2019, and September 7, 2019. He testified that water meter covers do not have a lock on them and that they can be accessed by anyone. He further testified that things are found in water meter boxes all the time, which suggests that somebody other than Metro has been accessing them.

Larry McClanahan ("Mr. McClanahan"),[1] a utility field specialist with Metro, provided similar testimony concerning the proper placement of water meter lids upon the conclusion of a work order. He testified that a meter box cover, if applied correctly, will sit inside the recessed lip so that it will not just pop off. He also testified that Metro workers are trained to put lids back on securely and step on them.

When asked whether simply pushing grass back to try to set a lid down would work, Mr. McClanahan responded, "It could if you got all the grass out of the frame." Indeed, as evidenced by the following colloquy, Mr. McClanahan provided similar testimony to that offered by Mr. Johnson, namely that it was not a violation of Metro policy to seat a lid if that can be accomplished by just pushing grass out of the way:

> Q. And if there's testimony that a water service's employee can get a lid back in the frame by pushing the grass out of the way and the lid gets seated, that's not a violation of any policy that you're aware of, is it?
>
> A. No.
>
> Q. If there's testimony that a water service's employee can get the lid back in the frame by maybe pulling out a little grass, that's not a violation of any policy you're aware of?
>
> A. No.

[1] Based on representations made to the trial court and to this Court, Larry McClanahan is not related to Metro's counsel Andrew McClanahan.

Q. And if there's testimony that a water employee uses a water key or a screw driver to scrape dirt away from the frame to get the lid back in, that's not a violation of policy, is it?

A. No.

Q. And just because there may be dirt or grass present, the policy is not [to] go to the truck and get the shovel out and dig all around it to a certain degree, is it?

A. No.

Q. The policy is, get that lid back in the frame any way possible, isn't it?

A. Yes.

Q. And make sure it's secure before you leave . . . correct?

A. Yes.

Q. By putting your foot on it?

A. Yes.

As alluded to previously when we discussed some of Mr. Johnson's testimony concerning a photograph represented to have been taken on the date of the accident, the proof showed that there was much grass surrounding the water meter at the time of Ms. Ware's fall. During the course of Mr. McClanahan's testimony, he was asked the following question: "So if that's the way it looked on the date of the accident, then there's no way that lid could go down and seat properly inside the recessed lip because of the grass and soil buildup preventing it from doing so, correct?" Mr. McClanahan agreed with this statement,[2] and he also suggested that, if Mr. Long had taken certain actions to repair the meter site during his visit prior to Ms. Ware's accident, the site would not have looked like it did on the date of the accident.[3] Yet, notwithstanding his testimony that the meter site

[2] In later testimony, when he was presented with a photograph represented to have been taken at or near the time of the accident, Mr. McClanahan testified that he observed grass but could not see dirt in the lip of the frame.

[3] For instance, consider the following exchange:

Q. So if this is a photograph of what the hole looked like on the day that she fell, that's not going to -- had it been done like this the proper way just previous, it wouldn't look like this within a short time after?

would not have looked like it did on the date of the accident had repairs previously been made, cross-examination of Mr. McClanahan readily revealed that he had no knowledge concerning what Mr. Long actually needed to do on his July 11, 2019, service call to ensure that the lid fit securely per Metro policy. Notably, Mr. McClanahan agreed that he did not have any knowledge of the conditions that Mr. Long would have encountered in July 2019. Moreover, Mr. McClanahan testified that he had never talked to Mr. Long about what Mr. Long did in July 2019 and that he had not seen any photographs of what the yard looked like on July 11, 2019. When asked for his agreement that he had "no way of knowing what William Long did or didn't do to be able to get that lid back in the frame on that day," Mr. McClanahan responded, "Correct." Further, when asked if he could say "whether or not [Mr. Long] had to push any grass out of the way to get the lid back in the frame," Mr. McClanahan stated, "I cannot."

Mr. McClanahan also provided testimony concerning an October 2021 visit he made to the site at issue. According to him, the lid was not fully seated in the frame at that time due to grass and soil buildup around it. Mr. McClanahan testified that the lid was not defective in any way, however, and he asserted that he was able to get the lid to seat inside the frame correctly by simply digging out soil and grass from around it. Mr. McClanahan testified that he could not say whether the conditions he encountered in October 2021 were the same as what Mr. Long had encountered on July 11, 2019.

As emphasized by Metro on appeal, another Metro employee had actually been to the site and worked at the meter in between the date of Ms. Ware's September 2019 accident and Mr. McClanahan's October 2021 visit.[4] This employee, Prentice Reagon ("Mr. Reagon"), also testified at trial. Mr. Reagon, a utility technician with Metro, testified in part concerning work he did at the meter for Ms. Ware's sister's residence in May 2020. The associated work order noted as follows for his service call: "[U]pon arrival meterbox was full of water, pumped out meterbox, dug out meterbox, found leak on OCL, repaired OCL leak in box, informed customer of OCL leak." Mr. Reagon stated that he learned during his service call that there had been a previous accident at the meter box and that he therefore felt like it was his duty "to make sure . . . that the meter box lid was secure and nobody else could step on it and fall in." He testified that he had placed the lid back on

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A. Correct.

[4] Metro emphasizes the point to suggest that "the fact that Mr. McClanahan found the water meter lid to be dislodged in October of 2021 is circumstantial evidence that weighs in Metro's favor, not Plaintiff's." Indeed, in connection with its discussion about how another employee, Prentice Reagon, testified that he put the lid back on securely during a May 2020 visit, Metro specifically reasons as follows:

> Any finding that the water meter lid was dislodged in October of 2021, after a finding that Prentice Reagon put the lid securely back on in May of 2020, is suggestive that something or somebody else, other than Metro, is causing the lid to become ajar. To be sure, there is no proof in the record that Metro did any work on that meter or raised the lid for any purpose from May 2020 to October 2021.

properly.

Mr. Reagon's testimony indicated that it was normal to stand on a lid to make sure it is properly seated. In relevant part, he testified as follows on the subject: "I usually always just stand on top of the lid, like, just to make sure it holds my weight. So if somebody else can stand on it and if somebody accidentally walks on it, then it will be fine." He agreed that, if he has to pull a lid to do work in the meter box, then it is his duty to make sure the lid goes back on inside the recessed lip. He further agreed that, if there is grass inside the meter box and around it that is preventing the lid from going down inside sitting flush, then it is his duty to pull the grass back so that the lid will go on flush. Regarding his visit, Mr. Reagon testified that he could remember grass being around the frame of the meter box. He noted that the comment section for his work order did not indicate that the lid was damaged.

Mr. Reagon noted that water meter boxes can be accessed by anybody, and he further testified that meter covers can be damaged or jarred from their seating by cars, lawnmowers, and simple vandalism. He testified that Metro would not know if a lid had been moved or dislodged if no complaint or notice was given. When asked if he had found a shoe when working on the meter at issue, Mr. Reagon said, "[I]t sounds familiar, it does."[5]

Mr. Long, who had serviced the meter at the residence of Ms. Ware's sister in July 2019, testified that he had been employed by Metro for over nineteen years. He testified that, in his current position as a senior field representative, he does troubleshooting for meters that do not read. His testimony indicated that he typically averages about twenty or twenty-two work orders per day and over 4,000 in a given year.

When explaining how a water meter cover fits into the water meter box, Mr. Long stated, "There's like . . . a little groove around the meter frame that sits inside the frame, so the lid sits inside the frame." He testified that he often encounters meters that have grass growing over them or dirt or mud around the frame. Regarding the policy of Metro and his responsibility to dig dirt back, Mr. Long's testimony was consistent with that of other witnesses. He stated, "Well, we just make sure that the meter lid is set back in that frame." According to him, he has to get his shovel or dig bar out "[a] couple of times a week." He testified that it is acceptable to simply scrape some dirt out around the recessed portion of the frame if that was all that was needed to get the cover to seat properly. When asked whether it is acceptable to put a lid back if you can do so by pushing grass out of the way, Mr. Long responded, "That's what I'm going to do, yes." He testified that Metro does not furnish its employees with weed eaters or lawnmowers and, further, that Metro does not take responsibility for yard maintenance in a customer's yard. When testifying as to his standard practice of what he does to make sure a water meter cover is put back on at the completion of a work order, Mr. Long testified as follows: "I've always been trained to put

[5] The trial court would later make a finding that Mr. Reagon had found a shoe.

my foot on that lid when I place it down. I stomp on it, and I usually walk away from the lid with my foot on the meter lid. It's just something I was taught." Mr. Long stated that this is what he did "[a]ll day, every day" and that it was something he had done "thousands" of times. He touched on this standard practice again later in his testimony, as evidenced by the following colloquy:

> Q. And is pulling grass or pushing grass aside to get that lid back in the frame, is that something you do all day --
>
> A. That's something I do all the time. There's nothing to that.
>
> Q. What's the last thing that you typically do on any job before you leave to make sure that water meter lid is secure?
>
> A. I'll stand on it. I'll get my tools in the truck, and I'll put my foot on that lid and walk away.
>
> Q. And you do that for what reason?
>
> A. Just to make sure it's safe. Make sure it's secure.
>
> Q. And you know it's important? You know that that's a safety issue?
>
> A. I was taught that from the first day I started.

Concerning the work he performed at Ms. Ware's sister's residence in July 2019, Mr. Long testified that, if he had encountered anything unusual, he could have made a note of it in the work order system. When asked whether the absence of any note on his work order indicated to him that there was not anything unusual when he went to the site, Mr. Long testified, "That's what it tells me." He testified the same regarding the absence of a note in relation to any problem concerning the meter box itself. Mr. Long further stated that it would "[n]ot necessarily" make it into his notes or comments if he had to get his shovel or dig bar out for any reason.

When asked if there was anything that stood out in his mind regarding the July 2019 work order as anything other than routine, Mr. Long responded, "No." He agreed that it was not unlike the thousands of other work orders he had done over the course of his career, and when asked if there was any doubt in his mind that he failed to put the water meter cover back on its frame, Mr. Long stated that he had no doubt.

When asked if he had an independent recollection of his work from July 2019, Mr. Long testified that he did not have an independent recollection but stated: "[T]his is what I do every day. I open that lid. I close it. . . . I know I opened that lid and I closed it

correctly." When revisiting this topic later in his testimony, Mr. Long specifically testified as follows: "It's just a routine. It's how I was taught. It's how everybody is taught. You make sure you lift that lid correctly in order not to hurt yourself, number one, and then you put it down correctly; put your foot on it." Upon being shown a photograph that was represented to have been taken on the date of Ms. Ware's accident, Mr. Long testified that he "would not have left that meter lid looking like that."

Just as other witnesses had explained at trial, Mr. Long testified that there was not anything that prevented someone from opening a water meter cover. Mr. Long testified that he encountered situations "all the time" where someone had accessed the water meter and removed or opened the cover. He further testified that it was "pretty common" to find things inside water meter boxes, such as toys and beer cans, indicating that someone else had been inside the box. Moreover, according to his testimony, water meter covers can become damaged or dislodged from cars or lawnmowers driving over them.

Following the conclusion of trial, the trial court entered an order in which it determined that Ms. Ware had not sufficiently proven her case. As evidenced by an oral ruling that was incorporated into the trial court's order dismissing Ms. Ware's claims against Metro, the trial court placed particular emphasis on the "habit" evidence pertaining to Metro water service employees, particularly the evidence of the routine practice of stepping on water meter lids at the conclusion of repair work. Regarding such testimony, and Mr. Long's testimony specifically, the trial court stated: "[H]e'll stomp on the lid to be certain it's secured before he leaves. Again, that's what the training is all about." The trial court continued: "[Metro workers] make sure the lid, metal lid, is securely placed back onto the metal casing and grooved in properly and then stepped hard or stomped onto the lid to be sure it's in place, and that's also a routine practice taught by the Metro Water Department. That's the routine practice of the organization." The trial court noted that Mr. Long had testified that there was no doubt in his mind that he had put the meter cover back because of his routine and practice, and the trial court found that his testimony was credible. Although Ms. Ware subsequently filed a motion to amend the trial court's order or for a new trial, relying in part on a declaration not previously offered to the court, the trial court ultimately denied Ms. Ware's motion, holding, among other things, that the tendered declaration had been "presented late" and that the evidence could have been known and discovered before trial with reasonable diligence. This appeal followed.

DISCUSSION

On appeal, Ms. Ware raises several issues in an effort to get this Court "to reverse the trial court's finding as to liability." She contends that the trial court's conclusion in this case is contrary to the weight of the evidence and specifically argues that the evidence presented at trial preponderates in favor of a determination that the water meter lid was not placed securely when Mr. Long serviced the meter. She argues that the trial court erred in accepting Mr. Long's testimony, erred in failing to appreciate and apply the testimony of

Mr. McClanahan, and erred in failing to apply a prior decision from this Court, *Morrow v. Town of Madisonville*, 737 S.W.2d 547 (Tenn. Ct. App. 1987). Because this case was decided by the trial court without a jury, we review factual findings de novo upon the record, with a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). We review questions of law with no presumption of correctness. *Purswani v. Purswani*, 585 S.W.3d 907, 914 (Tenn. Ct. App. 2019). The trial court's credibility determinations are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary. *Id.*

Ms. Ware and Metro both acknowledge in their appellate briefing that this is a case involving Ms. Ware's reliance on circumstantial evidence. Both parties also acknowledge that the following standard applies as it relates to Ms. Ware's reliance on circumstantial evidence: Ms. Ware does not have to eliminate all possible causes or inferences other than Metro's negligence, but she must show that the evidence for her case makes Metro's alleged or inferred negligence more probable than any other cause. *See, e.g.*, *Roberts v. Ray*, 322 S.W.2d 435, 437 (Tenn. Ct. App. 1958) ("The general rule for all cases of circumstantial evidence . . . is that to make out his case, plaintiff does not have to eliminate all other possible causes or inferences than that of defendant's negligence; but it is enough if the evidence for him makes such negligence more probable than any other cause."). The parties diverge, of course, on the propriety of the trial court's determination that Ms. Ware did not sufficiently prove her case.

As referenced earlier, Ms. Ware appears to reason that the trial court's finding as to liability should be reversed because the court failed to follow the aforementioned *Morrow* decision, while also failing to properly account for Mr. McClanahan's testimony. Indeed, in the conclusion section of her principal appellate brief, Ms. Ware specifically requests this Court to reverse the trial court's finding as to liability "in that the trial court erred in failing to apply *Morrow* and erred in failing to apply the testimony of [Mr. McClanahan]." To address Ms. Ware's invocation of the *Morrow* decision, we note that Ms. Ware appears to rely on the *Morrow* case given general similarities between the fact pattern involved in that litigation and the fact pattern involved here. In *Morrow*, the plaintiff sued a municipality for damages after she fell into a water meter box located on the street in front of her store. *Morrow*, 737 S.W.2d at 548. It was undisputed that "shortly before plaintiff fell a city employee who read the meter had removed the iron cover and replaced it." *Id.* Although the appellate decision is rather brief in length and sparse as to certain details regarding the case, it goes on to state in pertinent part that, "[g]iven the short lapse of time between the reading of the meter and plaintiff's fall, the trial court properly inferred defendant's employee was negligent in replacing the cover." *Id.*

It is apparent that Ms. Ware's criticism of the trial court relative to *Morrow* is that the trial court indicated in its ruling in this case that it did not regard Mr. Long's July 11, 2019, visit to the meter site as occurring "shortly" before Ms. Ware's September 7, 2019, fall. Indeed, her presented issue on appeal concerning *Morrow* asks whether the trial court

erred in finding that fifty-eight days did not qualify as "shortly" in the context of the *Morrow* decision. Ms. Ware answers her raised issue by submitting that the July 11, 2019, visit qualifies as "shortly" before September 7, 2019, and she appears to suggest that, like in *Morrow*, where negligence was inferred due to the short lapse of time between the reading of a meter and a plaintiff's fall, negligence connected to Mr. Long's visit should be inferred here. As support for her assertion that "the term 'shortly' pursuant to the *Morrow* case is applicable" to her case, Ms. Ware cites to two pages in the technical record that correspond to the declaration she filed in support of her post-trial motion. This declaration, which is from an attorney of record in the *Morrow* case, in essence purports to fill in chronological details not evident from the *Morrow* opinion itself. To the extent Ms. Ware's argument on appeal concerning *Morrow* is specifically dependent on this declaration, it is respectfully without merit. As outlined earlier, when the trial court denied Ms. Ware's post-trial motion, it stated that the declaration had been "presented late" and that the evidence could have been known and discovered before trial with reasonable diligence. Because we do not see anywhere in the argument section of Ms. Ware's brief where the trial court's determination concerning the declaration is challenged, any reliance on it is waived. *See Bean v. Bean*, 40 S.W.3d 52, 56 (Tenn. Ct. App. 2000) (noting the necessity of argument regarding the merits of a matter if it is to not be considered waived).

Regardless, of course, the negligence that Ms. Ware attempts to attach to Metro by way of Mr. Long must be proven in light of the evidence in this case. It is in light of that evidence and the trial court's accrediting of Mr. Long's testimony (and other testimony concerning the routine practice of Metro water service employees) that we discern no error in the trial court's determination. As we noted earlier, the trial court emphasized the evidence in this case pertaining to the routine practice of Metro water service employees stepping on water meter lids to ensure that they are secure upon the conclusion of repair work. Moreover, the trial court noted that Mr. Long had no doubt in his mind that he had put the meter cover back during his visit to the site because of his routine and practice. Although Ms. Ware's brief recites in passing that "courts recognize the danger of evidence regarding custom or habit and do not look on it with favor" and further states that, "[t]o be admissible, its relevancy and probative value must clearly apply," her brief does not indicate that she actually raised any issue concerning the admission of such evidence in the trial court.[6] This evidence was admitted, and Rule 406 of the Tennessee Rules of Evidence provides that evidence of the habit of a person or of the routine practice of an organization is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. Tenn. R. Evid. 406. There was also the testimony from multiple witnesses that water meter boxes can be accessed by anyone and that items are frequently found in them, and there was evidence before the trial court suggestive of the fact that the particular meter at issue here was being unseated by persons

[6] Nor does she actually appear to raise any issue concerning the admission of such evidence in her brief. As discussed herein, the thrust of Ms. Ware's position on appeal is in large part predicated on the testimony of Mr. McClanahan and the *Morrow* decision.

or causes other than Metro.[7]

It appears that Ms. Ware's chief objection is that the trial court did not rely on Mr. McClanahan's testimony to find Metro liable. She asserts that Mr. McClanahan proved her case and argues that, "[h]ad [Mr. Long] dug it out the way . . . Mr. McClanahan did, the accident photos would not have shown the significant soil and grass build-up within 60 days of Mr. Long's repair." According to a statement in her brief, Mr. McClanahan offered testimony "that there was 'no way' the lid could have been securely placed by Mr. Long" in light of what the box looked like on the day of her accident. Of note, however, the "no way" testimony that Mr. McClanahan provided was not in specific relation to whether Mr. Long could have properly secured the lid in July 2019. As was properly and accurately related by Ms. Ware in other sections of her brief, and as detailed in our overview of Mr. McClanahan's testimony, his "no way" testimony was as to whether the lid could seat properly given depicted conditions represented to have been *as of the date of the accident*. Respectfully, there is a missing link in the picture that Ms. Ware attempts to paint. As mentioned earlier when discussing Mr. McClanahan's testimony, cross-examination of Mr. McClanahan revealed that he had no knowledge concerning what Mr. Long needed to do during his July 2019 visit to secure the lid. After all, he expressly agreed that he did not have any knowledge of the conditions that Mr. Long would have encountered. Based on the evidence offered at trial, knowledge of such conditions would be vital to providing any assessment of whether any digging at the meter site would have been required during Mr. Long's visit to secure the lid. As even Mr. McClanahan acknowledged, Metro policy is simply to get the lid back in the frame any way possible. He confirmed that workers are not required to get the shovel out and dig just because dirt or grass may be present, and he indicated it was not a violation of any policy if a worker can get a lid back in the frame by simply pushing grass out of the way. Obviously, conditions dictate the work that is required. Thus, although Ms. Ware seems to suggest that Mr. McClanahan's testimony dictates a reversal of the trial court's judgment, we fail to see how this is the case.

In summary, we do not find merit in Ms. Ware's arguments on appeal. Moreover, given the trial evidence transmitted to us in this matter and the trial court's accrediting of Mr. Long's testimony, we find no error in the trial court's determination in Metro's favor.

[7] For instance, as Metro points to in its appellate brief, the trial court noted that, during Mr. Reagon's visit, he "looked at the meter box to be certain the lid on the meter box was secure so he would be acutely aware of replacing the meter lid in proper fashion so it would not be subject to being loosened." Of course, when Mr. McClanahan later came to the meter site, he found the lid was not fully seated in the frame. As referenced in a previous footnote, Metro argues this itself "is suggestive that something or somebody else, other than Metro, is causing the lid to become ajar."

CONCLUSION

In light of the foregoing discussion, the judgment of the trial court is hereby affirmed.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE