

HEDGES OBSTRUCT VISION OF DRIVERS; FETUS SUFFERS BRAIN DAMAGE AS A RESULT

On July 21, 1994, at an intersection in South Florida, Driver Jane Doe was driving a 1991 vehicle which was leased by her husband, John Doe. She was proceeding northbound on a minor street and stopped at a stop sign and was planning to turn left onto a major avenue. Driver Betsy was driving a 1985 vehicle and was proceeding east on the major avenue towards the intersection of the minor street where Driver Jane Doe was proceeding from the stop sign and making a left turn. At the intersection where Driver Jane had stopped there was a large hedge which obstructed the vision for Driver Jane as she approached the intersection. The City owned the right-of-way adjacent to this property, onto which a portion of the hedge grew.

Dating back, as far as 1987, the hedge on the southwest corner of the intersection had obstructed motorists' vision as they approached this intersection on both the major avenue traveled by Driver

Betsy and the minor street traveled by Driver Jane. The hedges spanned the entire length of the property parallel to the major avenue. In 1987, the City first notified the property owners that this hedge was a visual obstruction and a danger to oncoming motorists. Thereafter, the property was cited by the City on numerous occasions because the hedge violated the visibility triangle at that intersection. The visibility triangle is an area at an intersection, 25-feet on each side, which requires that no visual obstruction be higher than 30 inches from the ground.

Over the years a number of automobile accidents occurred at the intersection. In 1992, a high school student was seriously injured there while driving a moped onto the major avenue after having stopped at the stop sign on the main street. This high school student sued the other driver as well as the City. Beginning July 6, 1994, the City hired surveyors to perform a specific purpose survey of the intersection and hedges. The survey showed that the southwest corner where the hedge was located actually grew into the right-of-way owned by the City. The Interim Director of the Public Works Department of the City testified that the Zoning Ordinance required that vegetation in the visibility triangle could not exceed 30 inches. The survey, however, showed these hedges to be greater than 30 inches, and that they actually extended from the property owners' land into the public right-of-way owned by the City. The Interim Director also testified that because the hedges grew into the right-of-way, the Department of Public Works had the responsibility of correcting the problem in the right-of-way. He also testified that Building and Zoning was responsible for notifying the landowner of the violation of the hedge on her property, vis-a-vis the visibility triangle.

In addition, a Code Enforcement Inspector for the City testified that he inspected

the encroachments into the public right-of-way, and as part of his job, enforced and inspected the visibility triangle. He testified that before January of 1994, he actually went to this intersection and hacked part of the hedge back with a crew of City workers.

In summary, the City was on notice for many years that the hedge created a danger and obstruction to oncoming motorists, but did nothing about it. At least one lawsuit was filed for the same problem prior to this lawsuit and that a number of automobile accidents occurred before July 21, 1994.

On July 21, 1994, one day before the finalization of the specific purpose survey, Driver Jane was driving her vehicle on the side street approaching the major avenue. At the same time, Driver Betsy was driving on the major avenue, approaching the side street. Neither driver saw the other's automobile until almost at the time of impact. Driver Betsy was traveling at approximately 48 m.p.h., some 18 m.p.h. above the speed limit. Only a portion of her vehicle's roof was visible to Driver Jane as she approached the intersection.

As a result of the accident (involving the front of Driver Betsy's vehicle and the driver's side of Jane's vehicle), Driver Jane, eight months pregnant, was taken to a local hospital. Two days later, her daughter was born with a severe brain injury as a result of the automobile accident.

Baby Doe is now 4 years old and totally disabled. A well known expert provided a life care plan and an economist evaluated both the loss of earning capacity and future medical care and treatment. Chris Searcy and David White were set to try this case. However, after negotiations and mediation, the case settled. The money has been placed in a guardianship account to care for this beautiful little girl for the remainder of her life, which will provide for her medical care and treatment and loss of earning capacity. ■

