Parsing *Pell* to Provide Context: What Constitutes an Unusual Obstacle or Obstruction?

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In a matter of first impression, the Alabama Court of Civil Appeals held in *Pell v. Tidwell* that a signaling motorist could not be held liable for the negligent actions of another motorist who fails to independently ensure that it is safe to cross an intersection, especially under normal driving conditions.[1] The court described normal driving conditions as those under which there are "no unusual obstructions or conditions." *Pell* is limited in its practical application in that its definition of "normal driving conditions" has no context or precedent under either statute or case law in Alabama.

Thomas Pell, who was a passenger in a two-vehicle motor vehicle accident, brought an action for negligence against a truck driver Lance Tidwell and Tidwell's employer Municipal Utilities Board of Albertville, alleging that Tidwell gave another motorist, Donna Rucks, a hand signal indicating that the right-of-way was clear for Rucks to enter the roadway.[2] Upon entering the roadway, Rucks' vehicle collided with Pell's vehicle, and Pell was injured as a result of the collision. Tidwell filed for summary judgment, arguing that he could not be held liable for Rucks' actions after Tidwell had signaled to her to proceed, because he had no legal duty to either Rucks or Pell when he motioned for Rucks to proceed, and that his "act of courtesy" did not create a duty on Tidwell nor relieve Rucks of her non-delegable duty to yield the right-of-way to oncoming traffic. The trial court granted summary judgment, and Pell appealed to the Court of Civil Appeals. The Court of Civil Appeals considered whether, as a matter of law, Tidwell could be held liable for negligently signaling for Rucks to proceed.[3]

The Court of Civil Appeals, in looking to other jurisdictions for guidance, found that states are split on the issue of whether to impose liability on a signaling driver. The minority view, resting on the premise that a driver's signal to another to cross can be inferred as no more than a yielding of the right-of-way for the signaling driver alone, holds that no duty exists for a signaling driver, and the signaling driver cannot be responsible for any accident that might occur when the crossing driver enters into a different lane of travel.[4] The majority view holds that a signaling motorist may, under certain circumstances, be held liable. This view rests on the principle that by acting gratuitously, the signaling driver assumes a duty of care. Where a signal may be interpreted as an indication that the way is all clear and safe to proceed, and the signaled motorist relies upon the "all clear" signal, liability can then be imposed on the signaling driver.[5]

The Alabama Court of Civil Appeals, in adopting the minority view in *Pell*, held that a signaling motorist could not be held liable for the negligent actions of another motorist who fails to independently ensure that it is safe to cross an intersection, especially under normal driving conditions, "because a driver cannot delegate his or her responsibility for ensuring that it is safe to proceed across an intersection…. [T]he signaling motorist's conduct constitutes a courtesy to the signaled motorist, but it does not relieve the signaled motorist of his or her own duty to ensure that it is safe to proceed."[6] More

specifically, “a motorist's hand signal to another motorist to proceed does not absolve the signaled motorist of his or her duty under Alabama law to ensure that it is safe to travel across an intersection and to yield to oncoming traffic. This is especially true when…there are no unusual obstacles or obstructions.”[7]

What the Court of Civil Appeals has left unclear, and what is not elsewhere defined or described in Alabama law, is what circumstances would be considered “unusual obstacles or obstructions” that constitute abnormal driving conditions. While Alabama has not distinguished the expected obstacles or obstructions that would qualify as “normal driving conditions,” as compared to the unusual or unexpected obstacles or obstructions that are not normal, other states have to some degree dealt with these distinctions and can provide some guidance.

Unusual Obstacles

In more than one hundred years of Alabama case law and statutes concerning the operation of motor vehicles, *Pell* appears to employ the only use of the term "unusual obstacles" as it relates to driving or road conditions. In *Pell*, the Court found that while a truck was larger and would be more difficult to see around than a car, a truck stopped on a roadway did not amount to an abnormal driving condition. With that as a parameter, it is useful to look to other jurisdictions to see how other courts have defined “unusual” or unexpected obstacles, even though there is likewise surprisingly little usage of the term in opinions from other jurisdictions.

Although not in the context of a signaling driver, the boxcar of a train that was in a motorist’s path and a tree lying across a roadway were found to be unusual obstacles in Louisiana.[8] A young child who ran into the pathway of a moving bus was a “sudden and unexpected obstacle” in New York.[9] Again in Louisiana, a pedestrian in a roadway at night was held to be an “unusual or unexpected obstacle or obstruction.”[10] Electrical wire that was hung too low, thus killing a horse in the Bronx in 1906, was found to be an unexpected and unusual obstacle.[11] A motorist who encountered dogs in the roadway upon cresting a hill in Georgia was found to have confronted a “sudden and unexpected” and “unforeseeable obstacle.”[12] In New Hampshire, “passing a truck where the path ahead is obscured” was used as an example of an unusual obstacle or obstruction.[13] A small construction barricade, placed in the roadway by unknown pranksters and encountered by a motorist at 3:00 a.m., was an unexpected obstacle, in South Carolina.[14]

Unusual Obstructions

Under a now-repealed section of the Alabama Code, an obstruction was previously defined as occurring when, at any time during the last fifty feet of a driver’s approach to an intersection, “he does not have a clear and uninterrupted view to such approach to such intersections and of the traffic upon all of the highway entering such intersections for a distance of 200 feet from such intersections.”[15] While the statute defining an obstruction is no longer in effect, there is substantial Alabama caselaw from which to draw conclusions as to the circumstances that create an obstruction. Another vehicle on the roadway may sufficiently impede a driver’s view to be an obstruction.[16] Foliage along a roadway may

be an obstruction.[17] Even the grading, curvature, or other contours of a roadway itself can be an obstruction.[18] Buildings and vegetation at a roadway's intersection with a railroad crossing can be an obstruction.[19] Boxcars on a railway can obstruct a motorist's view.[20] But even with this wealth of case law addressing obstructions on or near roadways, neither the state legislature nor the Alabama courts have clearly expressed what constitutes an "unusual" obstruction.

For guidance on what constitutes an "unusual" obstruction as the term was employed by the Alabama Court of Civil Appeals in *Pell*, it is necessary to once again turn to other jurisdictions to find context. Unusual obstacles or obstructions have been broadly defined in Tennessee as involving the presence of "extraordinary circumstances".[21] Louisiana has defined "unusual obstructions" as those conditions which one would have "no reason to anticipate would be encountered on the highway," such as stopped or slowly-moving unlighted vehicles in the roadway at night, including horse-drawn wagons.[22] Vegetation growing off the traveled portion of a roadway can constitute an unusual obstruction in Kansas.[23] Kentucky has found that smoke, fog, and glaring lights can amount to an unusual condition or obstruction.[24] Perhaps most morosely, a person lying motionless in the middle of the roadway at night is considered an unusual obstruction in Louisiana.[25]

Conclusion

The Alabama Civil Court of Appeals has provided to signaling motorists in Alabama an umbrella of protection by finding that they owe no duty, at least in certain instances, to other drivers to whom they extend the courtesy of making a signal, but the court has not provided a barometer whereby a signaling motorist can determine what constitutes normal driving conditions, or the presence or absence of unusual obstacles or obstructions. The language used by the court in *Pell* appears to impart that there are obstacles and obstructions that would not be unusual, and that one could expect to encounter in the normal course of driving, and that there are other obstacles and obstructions that are unusual and unexpected and constituted abnormal driving conditions. Due to ill-defined terms and a lack of precedent, however, it is difficult to forecast what fact patterns might emerge that will allow a motorist to be absolved of liability for gratuitously signaling another driver. While one might hope for more specificity from the court in defining "unusual obstacles or obstructions," one may instead be relegated to Justice Stewart Potter's notorious axiom: "I know it when I see it."

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[1] *Pell v. Tidwell*, 139 So.3d 165 (Ala.Civ.App. 2013). The Supreme Court of Alabama denied certiorari on August 16, 2013.
[2] Pell initially filed suit against Donna Rucks as well, but Rucks and Pell reached a pro tanto settlement agreement prior to the appeal.
[3] *Pell*, 139 So.3d at 167.
[4] *Pell*, 139 So.3d at 168 (citing *Duval v. Mears*, 602 N.E.2d 265 (Ohio App.1991).
[5] See *Pell*, 139 So.3d at 168-169; see also *Cunningham v. Natl. Serv. Industries, Inc.*, 331 S.E.2d 899 (Ga.App. 1985); *Massingale v. Sibley*, 449 So.2d 98 (La.App. 1984); *Askew v. Zeller*, 521 A.2d 459 (Pa.Super. 1987).
[6] *Pell*, 139 So.3d at 170.
[7] *Id*. The Court of Appeals borrowed the language "no unusual obstacles or obstructions" from *Peka v. Boose*, 431 N.W.2d 399 (Mich.App. 1991), in which the Michigan Court of Appeals used the term to define ordinary driving circumstances.
[8] See *Buchholz v. Dealers Transport Co.*, 399 So.2d 1303 (La.App. 1991); see also *Wilson v. State*, 364 So.2d 1313 (La.App. 1978).
[9] *Appel v. New York City Transit Authority*, 114 A.D.2d (N.Y.Sup.Ct.App.Div. 1985).

[10] *Shroyer v. Grush*, 555 So.2d 534 (La.App. 1989).
[11] See *Jones v. Union Railway Co.*, 50 Misc. 651 (N.Y.Sup.Ct. 1906).
[12] *Kelly v. Adams*, 398 S.E.2d. 848 (Ga.App. 1990).
[13] *Williams v. O'Brien*, 669 A.2d 810 (N.H. 1995).
[14] See *Shirey v. U.S.*, 582 F.Supp. 1251 (D.C.S.C. 1984).
[15] Ala. Code (1975) § 32-5-91(b)(3) (Repealed in 1980).
[16] See *Ex parte Rollins*, 403 So.2d 918 (Ala. 1981); see also *Wilkerson v. Johnson*, 868 So.2d 417 (Ala. 2003).
[17] See *Johnston v. Weissinger*, 143 So. 464 (Ala. 1932).
[18] See *Mobile Cab & Baggage Co., Inc. v. Akridge*, 240 Ala. 355 (Ala. 1940); see also *Sellers v. Sexton*, 576 So.2d 172 (Ala. 1991).
[19] See *Louisville & N.R. Co. v. Outlaw*, 60 So.2d 367 (Ala.Civ.App. 1951); see also *Borden v. CSX Transp., Inc.*, 843 F.Supp. 1410 (N.D.Ala. 1993).
[20] See *Norfolk Southern Ry. Co. v. Johnson*, 75 So.3d 624 (Ala. 2011).
[21] *Martinez ex rel. Chavez v. Martinez*, 2001 WL 256152, *4 (Tenn.App. 2001).
[22] *Driscoll v. Allstate Ins. Co.*, 223 So.2d 689, 692 (La.App. 1969); see also *Miller v. Kinney*, 213 So.2d 124 (La.App. 1968); *Mose v. Ins. Co. of State of Pa.*, 134 So.2d 312 (La.App. 1961).
[23] See *McCleary v. Boss*, 955 P.2d 127 (Kan.App. 1997).
[24] See *Mitchell v. Doolittle*, 429 S.W.2d 862 (Ken.App. 1968).
[25] See *Sanders v. Eilers*, 217 So.2d 205 (La.App. 1968).