

HIDALGO ENTERPRISES, INC., PETITIONER, VS. GUILLERMO BALANDAN, ANSELMA ANILA AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-3422. June 13, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

This is an appeal by certiorari, from a decision of the Court of Appeals requiring Hidalgo Enterprises Inc. to pay Guillermo Balandan and his wife, damages in the sum of P2,000 for the death of their son Mario.

It appears that the petitioner Hidalgo Enterprises Inc. "was the owner of an ice-plant factory in the City of San Pablo, Laguna, in whose premises were installed two tanks full of vatar, nine feet deep, for cooling purposes of its engine. While the factory compound was surrounded with fence, the tanks themselves were not provided with any kind of fence or top covers. The edges of the tanks were barely a foot high from the surface of the ground. Through the wide gate entrance, which was continually open, motor vehicles hauling ice and persons buying said commodity passed, and any one could easily enter the said factory, as he pleased. There was no guard assigned on the gate. At about noon of April 16, 1943, plaintiffs' son, Mario Balandan, a boy barely 6 years old, while playing with and in company of other boys of his age, entered the factory premises through the gate, to take a bath in one of said tanks; and while thus bathing, Mario sank to the bottom of the tank, only to be fished out later, already a cadaver, having died of 'asphyxia secondary to drowning'."

The Court of Appeals, and the Court of First Instance of Laguna, took the view that the petitioner maintained an attractive nuisance (the tanks), and neglected to adopt the necessary precautions to avoid accident to persons entering its premises. It applied the doctrine of attractive nuisance, of American origin, recognized in this jurisdiction in *Taylor vs. Manila Electric* 16 Phil., 8.

The doctrine may be stated, in short, as follows: One who maintains on his premises dangerous instrumentalities or appliances of a character likely to attract children in play, and who fails to exercise ordinary care to prevent children from playing therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises. (See 65 C. J. S., p. 455).

The principal reason for the doctrine is that the condition or appliance in question although its danger is apparent to those of age, is so enticing or alluring to children of tender years as to induce them to approach, get on or use it, and this attractiveness is an implied invitation to such children (65 C. J. S., p. 458).

Now, is a swimming pool or water tank an instrumentality or appliance likely to attract little children in play? In other words is the body of water an attractive nuisance? The great majority of American decisions say no.

"The attractive nuisance doctrine generally is not applicable to bodies of water, artificial as well as natural, in the absence of some unusual condition or artificial feature other than the mere water and its location."

"There are numerous cases in which the attractive nuisance doctrine has been held not to be applicable to

ponds or reservoirs, pools of water, streams, canals, dams, ditches, culverts, drains, cesspools or sewer pools, * * *." (65 C. J. S. p. 476 et seq. citing decisions of California, Georgia, Idaho, Illinois, Kansas, Iowa, Louisiana, Miss., Missouri, Montana, Oklahoma, Pennsylvania, Tennessee, Texas, Nebraska, Wisconsin.)

In fairness to the Court of Appeals it should be staged that the above volume of Corpus Juris Secundum was published in 1950, whereas its decision was promulgated on September 30, 1949.

The reason why a swimming pool or pond or reservoir of water is not considered an attractive nuisance was lucidly explained by the Indiana Appellate Court as follows:

"Nature has created streams, lakes and pools which attract children. Lurking in their waters is always the danger of drowning. Against this danger children are early instructed so that they are sufficiently presumed to know the danger; and if the owner of private property creates an artificial pool on his own property, merely duplicating the work of nature without adding any new danger, * * * (he) is not liable because of having created an 'attractive nuisance.' Anderson vs. Reith-Riley Const. Co., N. E., 2nd 184, 185; 112 Ind. App. 170.

Therefore, as petitioner's tanks are not classified as attractive nuisance, the question whether the petitioner had taken reasonable precautions becomes immaterial, and the other issue submitted by petitioner—that the parents of the boy were guilty of contributory negligence precluding recovery, because they left for Manila on that unlucky day leaving their son under the care of no responsible individual—needs no further discussion.

The appealed decision is reversed and the Hidalgo Enterprises Inc. is absolved from liability. No costs.

Feria, Padilla, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

DISIDENTE

PABLO, M.:

La recurrente tiene dos estanques de agua, de nueve pies de profundidad, como anexos indispensables a su fabrica de hielo; estan contruidos dentro de un solar que esta cercado pero con una puerta de entrada siempre abierta en donde pasan libremente los coches que distribuyen hielo y las personas que lo compran de la fabrica; cualquiera puede entrar sin distincion alguna, no hay ningun guardia en la puerta que impida la entrada de cualquiera persona. A dichos dos estanques tiene libre acceso el publico.

Es evidente que la recurrente debio haber cercado dichos estanques como medida ordinaria de precaucion para que los niños de corta edad no puedan entrar, tanto mas cuanto que los bordes de esos estanques solo tienen un pie de altura sobre la superficie del terreno. El cerco puesto en el perimetro del solar, con puerta continuamente abierta, no es suficiente medida para impedir que los niños puedan meterse en los estanques Ese cerco con su puerta abierta es como un velo transparente con que se cubre una mujer semidesnuda en un teatro, pica la curiosidad y atrae la atencion del publico.

Los ninos son curiosos por naturaleza y los de ocho años no tienen perfecto conocimiento de las cosas. Alucinados por la natural atraccion de las aguas, se meteran en ellas con peligro de sus vidas, a menos que exista algo que les impida.

Voto por la confirmacion de la decision apelada.

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