

A car owner washed her car while it was parked on a public street, in violation of a local ordinance that prohibits the washing of vehicles on public streets during specified hours. The ordinance was enacted only to expedite the flow of automobile traffic. Due to sudden and unexpected cold weather, the car owner's wastewater formed a puddle that froze in a crosswalk. A pedestrian slipped on the frozen puddle and broke her leg.

The pedestrian sued the car owner to recover for her injury. At trial, the only evidence the pedestrian offered as to negligence was the car owner's admission that she had violated the ordinance. At the conclusion of the evidence, both parties moved for a directed verdict.

How should the trial judge proceed?

- A. Deny both motions and submit the case to the jury, because, on the facts, the jury may infer that the car owner was negligent.
- B. Deny both motions and submit the case to the jury, because the jury may consider the ordinance violation as evidence that the car owner was negligent.
- C. Grant the car owner's motion, because the pedestrian has failed to offer adequate evidence that the car owner was negligent.
- D. Grant the pedestrian's motion, because of the car owner's admitted ordinance violation.

Explanation:

Establishing breach of duty

Doctrine	Standard	Effect
Default	Defendant failed to act in same manner as reasonably prudent person in similar circumstances	Proof of breach
Custom / industry standards	Defendant failed to act according to local custom or industry standards	Evidence (but not proof) of breach
Negligence per se	Defendant violated law Law was intended to prevent plaintiff's type of harm Plaintiff is in class of persons law intended to protect	Breach presumed unless rebutted
Res ipsa loquitur	Plaintiff suffered injury usually caused by negligence of someone in defendant's position Evidence tends to eliminate other causes of injury	Allows (but does not require) inference of breach

To prevail on a **negligence** claim, the plaintiff must prove the following elements: duty, breach, causation, and damages. The elements of **duty and breach can be presumed** under the doctrine of **negligence per se** if the plaintiff proves that:

the defendant **violated a statute or ordinance**

that statute or ordinance was **intended to prevent** the **type of harm** suffered by the plaintiff *and*

the plaintiff is within a **class of persons** that the statute or ordinance was intended to protect.

If the plaintiff fails to present **legally sufficient evidence** to support all the elements of negligence at trial—ie, no reasonable jury could find in the plaintiff's favor—the court should grant the defendant's motion for a **directed verdict**.

Here, the pedestrian slipped on a frozen puddle and broke her leg. The puddle had been left by the car owner, who washed her car on a public street in violation of a local ordinance. But that ordinance was enacted to expedite traffic flow—not to protect pedestrians from slipping. Therefore, negligence per se does not apply. And since the pedestrian offered no other evidence supporting her negligence claim, the judge should grant the car owner's motion for a directed verdict (**Choices A, B, & D**).

Educational objective:

The requirements for negligence per se are that (1) the defendant violated a statute or ordinance, (2) the statute or ordinance was intended to prevent the type of harm suffered by the plaintiff, and (3) the plaintiff is within a class of persons that the statute was intended to protect.

References

Restatement (Second) of Torts § 328B (Am. Law Inst. 1965) (explaining that the trial judge determines whether the evidence is adequate to raise a factual dispute in a negligence action).

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