

Courthouse Reporter Series: The Bizarre Case That Required a 117-Year-Old Expert

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A recent decision by the Georgia Court of Appeals, *Munro v. Georgia Department of Transportation*, highlights how overly specific and inflexible rules of evidence can create peculiar results.

Munro involved a dispute over the design of a Georgia intersection. No. A23A0404, 2023 WL 4194716 (Ga. Ct. App. June 27, 2023). The plaintiff alleged that the defendant improperly designed the intersection, never corrected that improper design, and failed to properly maintain the intersection. These claims were dismissed for a very odd reason: the plaintiff's expert witness wasn't old enough.

The case arose from a car accident. A vehicle in which the plaintiff Munro was a passenger collided with a tractor trailer crossing an intersection. Munro sued the Georgia Department of Transportation (DOT) for negligently designing, maintaining, and inspecting the intersection. The DOT filed a motion to dismiss for lack of subject matter jurisdiction on the ground of sovereign immunity and a motion to exclude the testimony of the Munros' expert witness, among other motions. The trial court dismissed the case in full on the sovereign immunity ground and denied the other motions as moot. The Munros appealed.

The Georgia Court of Appeals reviewed the trial court's ruling on sovereign immunity *de novo*. It also ruled on DOT's motion to exclude the Munros' expert witness, notwithstanding the trial court's decision not to address that motion. In so doing, the Court of Appeals erected substantial hurdles to successfully stating a claim against the DOT.

The Munros' claims had to fit within a statutory exception to sovereign immunity. In Georgia, the DOT has statutory immunity for losses resulting from "design for construction of or improvement to . . . public works where such . . . design is prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation." OCGA § 50-21-24(10). So, to state a viable claim against the DOT, the Munros had prove that the design of the intersection was *not* in substantial compliance with design standards in effect at the time of preparation.

The Munros had to find a qualified expert to opine on these topics. This is where things became interesting. Per Georgia's Evidence Code, an expert witness whose testimony is to be used in a professional malpractice suit must have been licensed at the time of the alleged act or omission. OCGA § 24-7-702(c)(1). The Munros' expert's testimony was deemed inadmissible to support the claim of negligent design because the expert was not

licensed at the time of design and installation of the intersection. The expert witness was first licensed in 1969. However, because the intersection was designed even earlier, the Court of Appeals found that the expert witness's 54 years of experience were insufficient to qualify him to testify.

The Munros also attempted to prove that the DOT failed to improve the intersection. This claim, too, was foreclosed to them by virtue of the Munros' 80-year-old expert's relative "youth." Because this claim likewise required a showing that the original design was negligent—and the Munros did not have an expert who was licensed long enough to be qualified to testify to this effect—their failure-to-improve claim also failed.

To its credit, the Court recognized that its application of the Evidence Code "effectively destroys an entire class of claims for the negligent design of roads, as many roads in Georgia were designed long before any potential living expert witness had been licensed." Despite this arguably absurd result, the Court deferred to the intent of the Georgia legislature as evinced by the text of the statute.

The Munros ultimately utilized a different exception to sovereign immunity to successfully assert a negligent inspection claim. Georgia statutorily waives immunity for losses resulting from inadequate or negligent inspection of state property. O.C.G.A. § 50-21-24(8). The DOT did not claim immunity, but instead tried to argue that the negligent inspection claim was so intertwined with the negligent design claim as to warrant dismissal. Here, the Court sided with the Munros, noting that the DOT's duty to keep the intersection free from visual obstructions (e.g., overgrown bushes), was distinct from any design responsibilities. The Munros, therefore, were able to return to the trial court with their negligent inspection claim intact.

This decision was not appealed further, which might mitigate the attention *Munro* draws to Official Code of Georgia Section 50-21-24(10). Still, it will be interesting to track whether the decision, and the immortal-expert requirement that the legislature and the court may have inadvertently created between them, prompts an attempt to amend the Evidence Code. As things currently stand, assuming one can find an 85-year-old engineer willing to testify as an expert witness, such engineer likely wasn't licensed before age 25, meaning any claims requiring proof that a design done before approximately 1963 is negligent are foreclosed by the Code. The intersection at issue in *Munro* was designed in 1931, meaning the Munros would have had to find an expert at least 117 years old to be qualified to testify. This case is a paradigmatic example of enacting a statute with insufficient thought as to the bizarre results it could produce.

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