

NEGLIGENT OPENING OF INTERSECTION; FAILURE TO PROVIDE ADEQUATE TRAFFIC CONTROL; FAILURE TO PROVIDE FOR TRANSITION FROM ALL WAY STOP TO TWO WAY STOP; FAILURE TO PROPERLY MONITOR; PRE- AND POST-COLLISION ACCIDENT HISTORY: WRONGFUL DEATH; VERDICT

Mildred C. Brown, Administratrix of the Estate of Anika Lotrale Colbert, Deceased vs. Department of Transportation, State of Georgia
Superior Court of Stephens County Civil Action File
No. 93-CV-575S, May 13, 1994

Jury verdict of \$1,505,000.00 rendered for the wrongful death of a 16-year old black female allegedly occasioned by inadequate traffic control provided by the Georgia State Department of Transportation (DOT) at a newly opened intersection.

On September 28, 1991, Anika Lotrale Colbert, age 16, was a rear seat passenger in an automobile being driven by her 74-year old grandmother and adoptive parent, Elsie Wheeler Colbert, in which her elder sister, 49-year old Shirley Colbert Hunter, was a front seat passenger. Mrs. Colbert had adopted Anika when she was two years old, as Mrs. Colbert's son, who was Anika's natural father, had conceived her out of wedlock, and he and the natural mother had never raised or supported her.

The automobile was being driven by Mrs. Colbert on State Highway 123 in Toccoa, Stephens County, Georgia. Highway 123 was a two lane road which intersected State Highway 365, a newly constructed, four lane expressway with separate turn lanes and a grass median in between. As Mrs. Colbert crossed Highway 365, her car was violently struck broadside by a fully loaded gravel truck that had been travelling on 365 at approximately the speed limit of 55 miles per hour. Anika Lotrale Colbert, her mother

and sister were killed instantly. Two eyewitnesses testified that the Colbert automobile had run the stop sign for vehicles travelling on 123, and the driver of the truck which struck the automobile stated he had not seen it until it was directly in front of him.

The plaintiff, appointed as Administratrix of the estate of Anika Lotrale Colbert, settled with the other alleged tortfeasors for \$35,000.00 (\$20,000.00 from the trucking company and \$15,000.00 from Mrs. Colbert's insurance carrier, the limits of her coverage), and thereafter brought the instant action against the DOT, presenting evidence at trial that for several years, Highway 123 had been a through road, with Highway 365 (then Highway 17, the Toccoa bypass), dead ending into it, making it a "3 legged" intersection, with the only traffic control being a stop sign for traffic on then Highway 17. When the DOT determined to construct a four lane expressway and extend 365 through 123, its traffic engineers determined that traffic signals would be necessary at the intersection. However, due to the fact that the contract for traffic signals was let separately from the contract for the roadway paving, and because initial bids for the signal contract were rejected as being excessive, the traffic lights had not been installed at the time the intersection was completed and opened for traffic on September 4, 1991. Hal Rives, former Commissioner of the DOT, testified at trial on behalf of DOT as to bidding procedures, and testified that DOT was required by law to reject the excessive bids and rebid the project, resulting in delay in installing the signals.

DOT district engineers testified that they had made an effort to have the signal contractor who was ultimately awarded the signalization project expedite the installation, but were unable to do so, as the relet contract gave the contractor until November 30, 1991 to complete the signal installation. Moreover, while recommendations were made by two district traffic engineers that four way stop signs be installed at the intersection for temporary traffic control in the 2-3 months it was anticipated the intersection would be opened without signals, until they could be installed, the DOT District Engineer in charge overruled his subordinates and determined that only a two way stop for traffic on 123 would be necessary, stating that stop signs should never be put on a four lane expressway such as 365. Thus, no stop signs were provided for traffic on 365, which was left as a 55 mile per hour throughway with the right-of-way, and the side street, 123, was controlled by stop signs and required to yield the right-of-way.

The intersection was opened to the public on September 4, 1991, and DOT presented photographs and other evidence reflecting nine separate warning signs, including stop ahead and construction signs, at the intersection for traffic on 123. After the intersection was opened, seven collisions, all involving crossing incidents where traffic on 123 failed to yield the right-of-way to traffic on 365, occurred by September 27, 1991. After the triple fatalities of September 28, 1991, two additional crossing collisions occurred until the signalization project was expedited and signals put in place on October 16,

1991. Thereafter, in a period of over two years, there were only 12 collisions at the intersection, only one of which involved a crossing collision.

The DOT contended that it had had no notice of the accident history at the intersection, and that the decedent's mother had simply run a stop sign as stated by the only eyewitnesses. DOT further provided extensive evidence that she had poor vision and frail health, and should not have been driving. This evidence included testimony from her ophthalmologist revealing that she was legally blind in her right eye (the direction from which the truck that struck her was proceeding), and had vision of only 20/50, corrected, in the other, which had been measured a year prior to the fatal crash and which, the doctor opined, more than likely had deteriorated in the interim due to underlying diabetes and leakage of blood into the cornea, for which he had recommended laser surgery that she had not carried out. Medical records introduced further indicated that nurses visited her three times a week to fill her insulin syringes due to her poor vision, and to bathe and dress her due to her frail health and congestive heart failure. DOT asserted that based on the medical evidence, the clear sight patterns and signs at the intersection, and the eyewitness testimony, that Mrs. Colbert had failed to yield the right-of-way and had probably simply not seen the large gravel truck which had struck her, as her automobile had left no skid marks of any kind, and witnesses said no evasive maneuvers were taken prior to impact.

Plaintiff, however, located a newspaper reporter who stated that the driver of the gravel truck had told him shortly after the crash that the automobile had stopped before proceeding into the intersection, and plaintiff further presented evidence that the city engineer for Toccoa, within whose city limits the intersection was located, had advised a local DOT official, probably prior to September 28, that an inordinate number of collisions were occurring at the intersection, evidence the DOT flatly denied.

During the course of the trial, a high-low settlement was reached concerning the other two deaths which had occurred in this incident, the trials of which had been scheduled for later on in the Summer, wherein high and low figures were established for each, with the agreement that should the plaintiff prevail in the instant case, the high figure would be paid, with the low figure being paid should a defendant's verdict be rendered or should the matter be reversed on appeal. Accordingly, the wrongful death action on behalf of the 74-year old driver was settled for \$75,000.00, and the wrongful death action on behalf of the 49 year old passenger, who had been unemployed for a number of years and was suffering from lupus, a debilitating disease, at the time of her death, and who had recently served a prison term for a conviction involving drugs, was resolved for \$150,000.00.

The resulting jury verdict was not only the largest in the history of Stephens County, but the largest ever rendered in that Circuit of north Georgia.

[Plaintiff was represented by ATLA and GTLA members, William C. Lanham and Clark H. McGehee of Atlanta, Georgia.]