

Land Owner has No Duty to Remove Vegetation in Public Right-Of-Way

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Sometimes you can't see the liability through the trees or the shrubs or even the tall grass, for that matter. But for landowners, who have property within public rights of way, Michigan's court system has essentially pruned back their responsibility for maintaining overgrown vegetation on publicly accessed land.

In the case of Estate of *Clayton James Pappas v Yates*, et al, Docket No. 252438 (2005), the Michigan Court of Appeals held that the defendants had no duty to maintain the vegetation on their property that was within the public right-of-way easement.

In *Pappas*, the plaintiff was killed when his motorcycle struck a vehicle that was backing out of the defendants' driveway. The plaintiff's estate sued the defendants, alleging that their failure to maintain the vegetation on their property contributed to the accident because the vegetation obstructed the views of both the plaintiff and the person backing the vehicle out of the defendants' driveway.

In affirming the lower court's decision, the appellate court held that landowners of property abutting a street are presumed to own fee title to the property out to the center of the street, subject to the public right-of-way easement. The public right-of-way that results from the establishment of a public highway is presumed to be 60 feet in width.

The owner of the fee subject to an easement may rightfully use the land for any purpose not inconsistent with the easement owner's rights. However, the easement owner, rather than the owner of the fee subject to the easement, has a duty to maintain the easement in a safe condition so as to prevent injuries to third parties. Thus, the trial court properly dismissed the plaintiff's suit.

The Michigan Court of Appeals also rejected the plaintiff's claim that the defendants had a duty to maintain the public right-of-way because they regularly exercised control over it through common maintenance. The court ruled that the defendants' occasional mowing of the area did not amount to an exercise of possession and control that warranted imposing a duty upon them.

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