

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

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**AMY TYLER,**

Plaintiff-Appellant,

Vs.

**LARRY MORGAN, d/b/a LARRY  
MORGAN CONST. COMPANY,  
UNITED CITIES GAS CO.,  
ROGER P. DYE, d/b/a ROGER DYE  
CONST. CO., MURRAY TATUM,  
QUAD STATES, INC.,**

Defendants-Appellees.

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Williamson Circuit No. 96361  
C.A. No. 01A01-9711-CV-00661

**FILED**

**November 24, 1998**

**Cecil W. Crowson  
Appellate Court Clerk**

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**DISSENT**

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***CRAWFORD, J.***

I respectfully dissent from the majority opinion. Bearden's affidavit states that he had a conversation with the defendants' employees right after they finished pouring the concrete at about 5:00 or 5:30 p.m. He further states that after warning the workers that they should barricade the area, he was assured by the workers that they would put up a barricade. Although a stretched string is not much of a barricade as we normally think of a barricade, to some people it could be considered a type of a warning barricade. Since Bearden was assured by the workers that they would put up a barricade, and subsequently the so-called barricade existed, there appears to be an inference that the workers placed the barricade.

In considering a motion for summary judgment, the court must consider the motion in the same manner as a motion for directed verdict made at the close of the plaintiff's proof; that is, the court must take the strongest legitimate view of the evidence in favor of the nonmoving party allowing all reasonable inferences in favor of that party and discard all countervailing evidence. *Suddath v. Park*, 914 S.W.2d 910 (Tenn. App. 1995).

Although the defendants categorically deny any knowledge of the string, the fact that the defendant's employees said they were going to erect a barricade, in my opinion creates a genuine issue as to a material fact and precludes summary judgment.

I would reverse the order of the trial court granting summary judgment and remand this case for further proceedings.

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**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**