

BLANCA MARIA INCIARTE and JESUS
GUILLERMO INCIARTE, as Co-Personal
Representatives of the ESTATE OF EDGARD
JESUS INCIARTE, Deceased,
MIGUEL A. CALLEJAS, as personal representative of MIGUEL
EDUARDO CALLEJAS, Deceased

Petitioners

v.

FLORIDA POWER and LIGHT COMPANY,

Respondent

Petitioners commenced this negligence action against Florida Power and Light (hereinafter "FPL") and others for the December 10, 2000 death of 15 year old Edgard Inciarte. Edgard and his friend, Miguel Callegas, were electrocuted while standing in an energized pool of water surrounding a streetlight pole in Miami.

A frayed wire inside the pole was the cause, pointing to expert affidavits opining that uninsulated wires inside a pullbox in the ground energized the ground water, resulted in the electrocution deaths of these young boys. Petitioners pointed to evidence that FPL had sufficient knowledge of the danger of using pull boxes in a known swale area to give rise to a duty.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2005

MIGUEL A. CALLEJAS, etc.,
et al.,

Appellants,

vs.

HORSEPOWER ELECTRIC, INC.,
et al.,

Appellees.

**

**

** CASE NO. 3D04-829

**

** LOWER

** TRIBUNAL NO. 01-5622,
01-2026, and
02-28494

Opinion filed June 22, 2005.

An Appeal from the Circuit Court for Miami-Dade County,
Gill S. Freeman, Judge.

Ginsberg & Schwartz, and Todd R. Schwartz (Pembroke Pines);
Wallace, Chapas & Associates (Pittsburgh, Pennsylvania); Wolpe,
Leibowitz, Alvarez & Fernandez, LLP; Stanley M. Rosenblatt,
P.A.; and Stewart G. Greenberg, P.A., for appellants.

Florida Power & Light Co., and Cheryl Kempf and Rachel
Budke (Juno Beach); Patino & Associates and Ralph Patino; and
David M. Garvin, for appellees.

Before WELLS, SHEPHERD and CORTIÑAS, JJ.

SHEPHERD, J.

Miguel A. Callejas, as personal representative of Miguel Eduardo Callejas, a minor, and Yasset and Blanca Maria Inciarte and Jesus Guillermo Inciarte, as co-personal representatives of the Estate of Edgard Jesus Inciarte, a minor, appeal an adverse final summary judgment in a negligence action against Florida Power and Light Company (FPL). The undisputed facts show that the minor children were electrocuted when they stepped into an energized puddle of water surrounding a metal street light. The tragedy occurred because a wire inside the pole had frayed such that electrical current supplied by FPL energized the pole and thence the water. Although FPL supplied the electricity to the pole, it did not own the pole and had no contractual or other obligation to maintain it. Moreover, FPL did not have any knowledge of the frayed wire inside the pole.

It has long been the settled law of this state that:

where wiring or other electrical appliances on private premises are owned and controlled by the owner or occupant of such premises, a company which merely furnishes electricity is not responsible for the insulation or condition of such wiring or appliances and is not responsible for injuries caused by their defective condition

White v. Orlando Utils. Comm'n, 156 So. 2d 879, 881 (Fla. 2d DCA 1963). We see no reason why this principle does not extend to defective conditions existing on public property, at least absent knowledge by the utility. Id.

We find that the case before us is distinguishable from the numerous recent cases where the utility engaged in active negligence. See, e.g., Clay Elec. Coop. v. Johnson, 873 So. 2d 1182 (Fla. 2004) (duty exists where street light maintenance company undertook to maintain street light); McCain v. Florida Power Corp., 593 So. 2d 500 (Fla. 1992) (duty exists where electric utility employee assumed the obligation to accurately mark area traversed by underground cable for benefit of plaintiff); Goldberg v. Florida Power & Light Co., 30 Fla. L. Weekly S224 (Fla. Apr. 7, 2005) (duty to warn motorists of hazardous condition created when electric utility knew or should have known that deactivation of power would inactivate traffic signal); Dolan v. Florida Power & Light Co., 872 So. 2d 274 (Fla. 4th DCA 2004) (genuine issue of material fact existed as to whether FPL negligently maintained streetlight where FPL specifically had contractual duty to maintain streetlight).

Affirmed.