

NONE TOO PLEASED

“Not the Chevette!”

By James Komen with illustrations by Bryan Kotwica

Adapted from *Siple v. City of Topeka*, 235 Kan. 167 (1984)

In 1981, Jordan lived with his family in a modest house in Topeka, Kansas, USA. Adorning the parkway median across the street from Jordan's house was a line of large maple (*Acer* sp.) trees. The trees had canopies that arched over the street and shaded the neighborhood. Jordan was happy with his family. He was happy with his home. But there was one thing he was especially happy about.

He had just bought a brand new car.

Jordan's car was no ordinary car. It was a brand new 1981 Chevrolet Chevette. Its engine purred. Its tires squealed. Its metallic paint shimmered in the sun. Its gear shift was smooth as butter. Jordan *loved* his Chevette. Every day, he parked it on the street in front of his home.

Little did Jordan know, but his brand new 1981 Chevrolet Chevette would be the reason he would find himself before the Kansas Supreme Court.

Over the past few years, the maple tree in the parkway median across the street from Jordan had been dropping small branches here and there. The branches never hit anything, and the city just cleaned them up. Nobody paid much attention to the tree. It just stood there in the parkway median like all the others.

One day, as Jordan was arriving home from work, he noticed something black oozing out of the trunk of the maple tree. He got out of his Chevette and walked across the street to take a closer look. It appeared that there was a hollow spot on the tree where one of the branches had previously broken off. The cavity extended into the tree, and he couldn't see how deep it went. Looking around, Jordan could see that there were several other hollow spots on the tree too. Jordan became concerned that the tree was unwell. He called the city and asked for an inspector to come take a look at the tree.

Jordan was not the only one who thought something might be wrong. Several of his neighbors also complained



to the city about the falling branches and the cavities in the trunk. They thought that maybe the tree could fall and hit something. The neighbors felt that the city should do something about the tree.

After receiving so many complaints, the city's inspector finally came out to take a look at the tree. The inspector had many things to do that day, so he didn't have much time for an inspection. He

walked once around the tree to look at the cavities and the ooze. That was all. The inspector had seen many maple trees in parkway medians before. He knew that cavities were commonly found on maple trees. He didn't think that this tree looked out of the ordinary. It had a green canopy. It had been there for more than 20 years. It looked no different than any other maple tree he managed. The city inspector determined that the tree was fine.

It wasn't.

Not long after the inspection, a violent thunderstorm blew through Topeka. All night and into the morning, the wind blew and the rain fell. Suddenly, Jordan heard KA-RACK-BOOM! The sound shook his house.

Jordan ran to the window and looked out. The maple tree from across the street had collapsed and crushed his Chevette. The roof had buckled. The frame was bent. Rainwater was pouring in through the shattered windows. Fighting back tears, Jordan cried, "Not the Chevette!"

When Jordan saw that his brand new 1981 Chevrolet Chevette was wrecked, he was none too pleased.

Jordan demanded that the City of Topeka pay for the damage to his Chevette. Before the tree fell, he had complained about it to the city. His neighbors had complained about the tree. The city's inspector had personally looked at the tree. The tree was full of holes. There was black ooze coming out of its trunk. The city obviously knew or should have known there was a problem. How



could the inspector have left that tree standing? It seemed only fair that the city should pay. The city refused.

Jordan sued the City of Topeka. The trial court considered the evidence, and it agreed with Jordan. It found that the city knew or should have known that the maple tree was hazardous, because the inspector did a poor job of inspecting the tree. The trial court ordered the city to pay Jordan for a replacement Chevette.

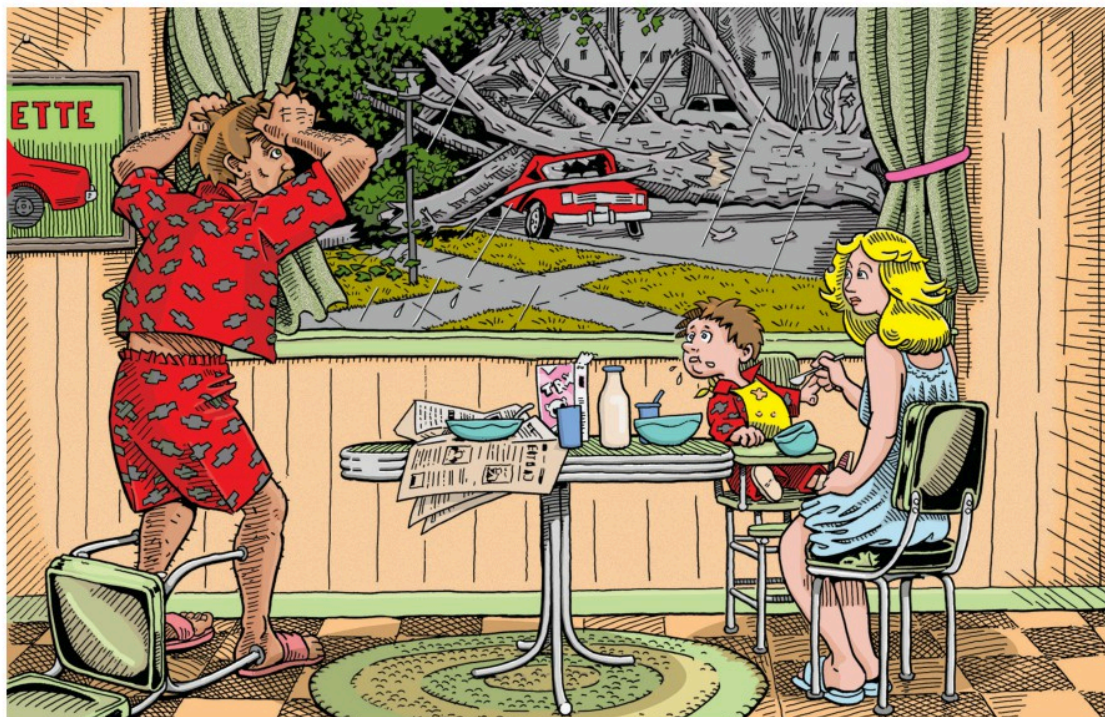
The City of Topeka appealed to the Kansas Supreme Court. It argued that it could not be held responsible for the damage. It claimed that it was immune from suit,

even if the inspector did a poor job of inspecting the tree. If the city could be held responsible for inspectors that did a poor job of inspecting street trees, then it wouldn't inspect the trees at all!

What did the Kansas Supreme Court do?

- Uphold the trial court and order the city to pay for the damage;
- Reverse the trial court and hold the city immune;
- Or something else!

Turn to page 27 to find out!



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The Kansas Supreme Court considered the city's appeal. It explained that Kansas, like many other jurisdictions, has a law that forbids lawsuits against the government for performing an inadequate inspection of private property¹. The reason for the law is government inspectors would avoid inspecting private property if they could be held responsible. The state lawmakers believed that it was better to encourage inspections to occur, even if the inspectors couldn't be held accountable for their bad inspections. Lawmakers believed it was better for there to be *some* inspections rather than *no* inspections.

How did the city learn that the tree was hazardous? The inspector inspected it. If the inspector hadn't inspected the tree, the city wouldn't have known it was hazardous. Jordan's lawsuit was based on a claim that the inspector performed an inadequate inspection.

But wasn't the tree in the parkway median? Wasn't it government property? Not in Kansas. Another Kansas law gave ownership of the land between the street and the adjacent property to the private landowners². In other



words, the City of Topeka didn't own the maple tree. Jordan's neighbor across the street did. The maple tree was private property. The inspection of the tree was an inspection of private property.

The Kansas Supreme Court concluded that the City of Topeka was immune. Jordan was suing for harm caused by the city inspector's inadequate inspection of private property. This was exactly the sort of lawsuit that the inspection immunity law was intended to prevent. Jordan got nothing.

The moral of the story:

Sometimes you can't sue the government for a bad inspection of a street tree. Also, be careful where you park your brand new Chevrolet Chevette!

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¹ "A governmental entity...shall not be liable for damages resulting from...making an inadequate or negligent inspection of any property other than the property of the governmental entity, to determine whether the property...contains a hazard to public health or safety." K.S.A. §75-6104.

² "The owners of property abutting upon streets, avenues and boulevards in cities shall have such title to and property in growing trees...situated in front of such real estate between the curb line and the property line..." K.S.A. §12-3207.

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