IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JANICE DREHER and	:	
THOMAS TAKACH, H/W,	:	
Plaintiffs	:	No. 10-00579
vs.	:	
WILLLIAMSPORT PARKING	:	CIVIL ACTION – LAW
AUTHORITY,	:	
Defendant	:	
vs.	:	MOTION FOR SUMMARY
RIVER VALLEY TRANSIT,	:	JUDGMENT
Additional Defendant	:	

O P I N I O N AND O R D E R

This matter comes before the Court as a result of Additional Defendant River Valley Transit's Motion for Summary Judgment filed on August 5th, 2011. This action arose on March 28th, 2008, when Plaintiff Janice Dreher and her husband, Thomas Takach, parked in the Williamsport Parking Authority Garage located at 115 W. Third Street in the City of Williamsport, Lycoming County, Pennsylvania. The couple was on their way to eat at a local restaurant. As Plaintiff Dreher was walking on the sidewalk in front of 115 W. Third Street, she alleges that her foot got caught in a crevice or depression in the sidewalk and that this condition caused her to fall and sustain injuries. Plaintiff Dreher was generally unfamiliar with the parking garage and the area of Williamsport where she fell. The Parking Authority owns the garage at 115 W. Third Street and has contracted with River Valley to perform day-to-day maintenance the garage. This maintenance includes sweeping and shoveling the sidewalk in question.

Original Defendant River Valley Transit (River Valley) and Defendant Williamsport Parking Authority (Parking Authority) are municipal entities of the City of

Williamsport; they are covered by the Pennsylvania Political Subdivision Tort Claims Act (Tort Claims Act), 42 Pa.C.S. §§ 8541-8564. Counsel agreed that the Tort Claims Act provides an exception to governmental immunity and that the relevant language as to sidewalks states:

> (7) *Sidewalks.* --A dangerous condition of sidewalks within the rights-of-way of streets owned by the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

42 Pa.C.S. 8542(b)(7).

Defendant and Additional Defendant deny knowledge of the depression or crevice in the sidewalk in front of the 115 W. Third Street garage. Defendants also deny knowledge of the existence of a dangerous condition on the sidewalk at issue. Plaintiffs have produced photographs taken several days after the accident which show the depression in a sufficient manner as to withstand summary judgment on the question of negligence.

The issue to be decided by this Court for summary judgment purposes is whether the Additional Defendant had either actual or constructive notice of a dangerous condition on the sidewalk in front of the 115 W. Third Street garage at a time sufficient to have taken measures to protect the public against the dangerous condition. Constructive notice is considered by this Court to be notice that the Additional Defendant could reasonably be charged with under the circumstances.

The Court may grant summary judgment if "an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of

action or defense which in a jury trial would require the issues to be submitted to a jury." Pa.R.C.P. 1035.2(2).

Mr. Todd Wright, an employee of the Additional Defendant who is responsible for day to day management at the 115 W. Third Street garage, testified that he did not have any notice of problems with the sidewalk prior to the day of Plaintiff Dreher's fall, that being March 28, 2008. Dep. of Todd Wright, 11, 21. Mr. Wright's testimony provides that he did not notice any defects or problems with the sidewalk prior to Plaintiff Dreher's fall and that neither he nor his staff had received any complaints about the sidewalk prior to Plaintiff Dreher's fall. *Id*. Further, Mr. Wright testified that his staff includes Mr. Gary Phillips, the facility supervisor, who assists with building maintenance and snow removal at the 115 W. Third Street garage. *Id.* at 14, 21. Additionally, Mr. William Nichols, Jr., the general manager of River Valley Transit, testified that neither prior to Plaintiff Dreher's fall nor when Mr. Nichols received notification of this fall was he aware of or received complaints of any falls at the 115 W. Third Street location. Dep. of William Nichols, 13.

Plaintiffs argue that the photographs of the scene and the testimony of Mr. Gary Gardner, a maintenance worker employed by the Parking Authority, are sufficient to establish constructive notice of the alleged dangerous conditions. Mr. Gardner did testify that he was aware that the pavement shifts in the area in question in the wintertime when the pavement is frozen and that the frost will cause heaving in the area in front of the garage where Plaintiff Dreher fell. Dep. of Gary Gardner, 10. In addition, Mr. Gardner testified that he sweeps the area of the accident and that he is responsible for snow removal in the area in question. Dep. of Gary Gardner, 8, 12. Further, Mr.

Gary Phillips of the Transit Authority testified that after the incident with Plaintiff Dreher occurred, he wanted to have the area of the sidewalk fixed because there was "a little bit of wear and tear." Dep. of Gary Phillips, pg. 21

Although a plaintiff may not have to produce positive proof as to how long a defect existed there must be at least some substantial evidence that the defect existed long enough to be noted and remedied. *Stais v. Sears-Robuck, Inc*., 102 A.2d 204, 206 (Pa. Super. Ct. 1954). The evidence that will amount to constructive notice of a dangerous condition varies with each case. *Poskin v. Pennsylvania Railroad Co.*, 110 A.2d 865, 866 (Pa. Super. Ct. 1955).

In analyzing the record, this Court finds no evidence whatsoever as to when the alleged dangerous condition arose and whether Defendants had a reasonable period of time to make repairs to protect against the dangerous condition. This record does not contain circumstantial evidence that would establish how long the alleged defect was in existence and whether it could have been remedied. Summary judgment is appropriate where the record is clear that a missing element of the negligence claim in not available. Here, the missing element is when the condition arose, and without that element the evidence is not sufficient to present the jury with an issue of notice.

Our Court has recently granted summary judgment to the City of Williamsport in a similar case, that being *Preston v. City of Williamsport*, 09-02785 (C.C.P. Lycoming County 2011). In that case, Judge Anderson found that a pothole in a busy street where city employees travel daily was not sufficient circumstantial evidence to find that the City had sufficient time to locate and remedy the problem. This Court believes and finds that *Preston, supra*, is very persuasive in this case.

In short, the Tort Claims Act requires not only notice of a dangerous condition but that the notice be "at a sufficient time prior to the event." 42 Pa.C.S. 8542(b)(7). This record is totally devoid of evidence of when the dangerous conditions arose, and, thus, this Court cannot determine whether Defendants had sufficient time to remedy the problem sidewalk. Thus, Plaintiffs have failed to produce evidence of facts essential to a jury case, and, summary judgment is appropriate. *See* Pa.R.C.P. 1035.2(2).

ORDER

AND NOW**,** this 13th day of September, 2011, for the reasons mentioned above, Additional Defendant's Motion for Summary Judgment is GRANTED, and Plaintiffs' claims against Original Defendant Williamsport Parking Authority and Additional Defendant River Valley Transit are DISMISSED.[1]

By the Court,

Richard A. Gray, Judge

RAG/kae

cc: David F. Wilk, Esquire
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Gary Weber

1 Original Defendant has joined in the Motion for Summary Judgment and stands in the same legal position as Additional Defendant.