

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN WEISER and DONNA WEISER,	:	DOCKET NO. 13-00,280
Plaintiffs,	:	
vs.	:	CIVIL ACTION
	:	
MICHELLE HECKMAN and	:	PRELIMINARY
SOUTH WILLIAMSPORT BOROUGH,	:	OBJECTIONS
Defendants.	:	

OPINION AND ORDER

Pending before the Court are two (2) sets of preliminary objections to Plaintiffs' Amended Complaint, filed March 13, 2013. This matter arises out of a trip-and-fall that occurred outside of the home of Michelle Heckman (Heckman), located at 626 South Howard Street (premises) within the South Williamsport Borough (Borough), Lycoming County, Pennsylvania. Plaintiff Mr. Weiser alleges he tripped over a curb located on the premises and sustained injuries on approximately June 12, 2011.

I. Heckman Objections

Presently, Heckman raises three *Connor*¹ objections to ¶ 23 (g)-(i) of the Amended Complaint. The Court GRANTS Heckman's objections to ¶ 23 (h)-(i) on the basis that the averments are too broad and in violation of *Connor*. However, the Court DENIES Heckman's objection to ¶ 23 (g); the Court believes that when reading this averment in the context of the pleading as a whole no *Connor* violation has occurred.

II. Borough Objections

a. Connor Objections

Borough also raises two *Connor* objections; these objections are to ¶ 27 (l)-(m) of the Amended Complaint. The Court GRANTS Borough's objections to these paragraphs on the basis that the averments are too broad and in violation of *Connor*.

¹ *Connor v. Allegheny General Hospital*, 461 A.2d 600, 603 n.3 (Pa. 1983).

b. Vehicle Exception Objections

Borough also raised objections in the form of a demurrer to Amended Complaint ¶ 27 (a)-(b). Borough objects to these averments because they are premised on the vehicle liability exception to the Political Subdivision Torts Claim Act (Tort Claims Act or Act), 42 Pa. C.S. §§ 8541-64. Borough argues that the vehicle exception does not apply because the vehicle was not in “operation” when Plaintiff was injured. The Court agrees.

The Tort Claims Act provides immunity to political subdivisions from tort liability, unless an action falls within one of its eight (8) enumerated exceptions. 42 Pa. C.S. § 8542. Vehicle liability is an included exception; thus, a subdivision may be held tortuously liable as a result of “[t]he operation of any motor vehicle in the possession or control of the local agency.” 42 Pa. C.S. § 8542(b)(1); *Love v. City of Philadelphia*, 543 A.2d 531, 532 (Pa. 1988). It has long been held that the vehicle liability exception to governmental immunity should be narrowly tailored. *Regester v. County of Chester*, 797 A.2d 898, 903 (Pa. 2002); *White v. Persall*, 718 A.2d 778 (Pa. 1998); *Love*, 543 A.2d at 532. Therefore, the vehicle liability exception does not apply when the movement of the vehicle or its parts is not directly connected with the alleged injury. *Compare Regester*, 797 A.2d at 904-05 (vehicle exception did not apply when ambulance driver ignored travel directions given to him and travelled to a wrong location when cardiac arrest victim ultimately died in his home); *White*, 718 A.2d at 780 (vehicle exception did not apply when school bus driver waived a child across the street into oncoming traffic causing child to be hit by an automobile); *Love*, 543 A.2d at 533 (vehicle exception did not apply when city employee misplaced a portable step outside of city-owned van causing alighting passenger to fall and sustain injuries) and *City of Philadelphia v. Melendez*, 627 A.2d 234 (Pa. Cmwlth. Ct. 1993) (vehicle exception did not apply when negligently parked city vehicle blocked the

plaintiff's view of traffic causing her to collide with another automobile) *with Cacchione v. City of Erie*, 674 A.2d 773 (Pa. Cmwlth. Ct. 1996), *appeal denied*, 686 A.2d 1313 (Pa. 1996) (vehicle exception applied when parked city truck rolled backwards and crashed into the plaintiffs' home causing damage to personal property and emotional injuries).

On the face of the pleadings, it is evident that Plaintiff's injuries were not caused by the Borough's negligent acts with respect to the operation of a vehicle, i.e. a snow plow. The pleadings allege that a snow plow caused damage to the curb and/or sidewalk in front of Heckman's home which Plaintiff ultimately tripped over in the summer of 2011. Plaintiffs do not allege Mr. Wieser was directly injured by the snow plow; they allege the snow plow caused a defect in the curb and/or sidewalk that then lead to his injury. On the face of the pleadings, the injury alleged by Plaintiffs is too removed from Borough's alleged negligent operation of the snow plow for the vehicle exception to apply. Therefore, the Court GRANTS Borough's objections to Amended Complaint ¶ 27 (a)-(b).

c. Duty to Warn and Inspect Objections

Lastly, Borough raises five (5) objections in the form of a demurrer to Amended Complaint ¶ 27 (e)-(h) and (k). Borough alleges that it does not have a duty to warn or inspect the street and/or sidewalk under the Tort Claims Act. Upon a review of Borough's cited case law, the Court cannot agree that a demurrer is warranted on these claims at this stage of the proceeding.

Borough argues that as a political subdivision it does not have a duty to warn or inspect the alleged dangerous condition of the sidewalk; in support of this assertion, Borough cites *Faiella v. Bartoles*, 517 A.2d 1019 (Pa. Cmwlth. Ct. 1986), *Prescott v. Philadelphia Housing Auth.*, 555 A.2d 305 (Pa. Cmwlth. Ct. 1989), *Kiley v. City of Philadelphia*, 645 A.2d 184 (Pa.

1994) and *Houston v. Central Bucks School Auth.*, 546 A.2d 1286 (Pa. Cmwlth. Ct. 1988), *appeal denied*, 562 A.2d 322 (Pa. 1989).² The Court does not believe that any of these cases directly apply to the issue at hand. In Plaintiffs' Amended Complaint, it is alleged that Heckman told Borough on at least two (2) separate occasions about the damage to the sidewalk prior to the instant trip-and-fall. Amended Complaint ¶ 11. Reading Plaintiffs' averments as true and correct, Borough was placed on notice of the defective condition prior to Plaintiff's fall. Based upon this assumed notice to the Borough, the Court believes Amended Complaint ¶ 27 (e)-(h) and (k) to be proper at this stage of the proceeding.

The Court enters the following order.

ORDER

AND NOW, this 24th day of May, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Defendants' objections are GRANTED in part and DENIED in part. Specifically, Defendants' objections to Amended Complaint ¶ 23 (h)-(i) and ¶ 27 (a)-(b) and (l)-(m) are GRANTED. These paragraphs are STRICKEN from the Amended Complaint. Defendants' objection to Amended Complaint ¶ 23 (g) and ¶ 27 (e)-(h) and (k) are DENIED.

Defendants shall file responsive pleadings within twenty (20) days.

BY THE COURT,

Date

Richard A. Gray, J.

² *Faiella* provides that a political subdivision's failure to warn the public that firearm use was permitted on the property, along with its failure to properly supervise those individuals using firearms on the property, does not fall within the real property exception to governmental immunity. 517 A.2d at 1020-21. *Prescott* held that exercising supervisory control over a property does not equate to "possession" within the real property exception of the Act. 555 A.2d at 309. *Kiley* opines that in order to hold a political subdivision liable for a dangerous condition found on a sidewalk, the injured party must demonstrate that the dangerous condition caused the alleged injuries. 645 A.2d at 187. Lastly, *Houston* affirmed a grant of summary judgment when the record showed that an injured student's fall was not caused by the condition of the school property or connected in any way to the sidewalk, street, or real property. 546 A.2d at 1290-91.

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