

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ARDEN L. MERRYMAN and SUSAN A. EBERHART,	:	NO. 11 - 02,161
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	
Defendant	:	
	:	
vs.	:	
	:	
SHIRLEY L. KREAMER, as Executrix of the Estate of	:	
Boyd E. Kreamer,	:	Motion for Partial
Additional Defendant	:	Summary Judgment

OPINION AND ORDER

Before the court is PennDOT’s Motion for Partial Summary Judgment, filed August 1, 2014. Argument on the motion was heard September 15, 2014.

This action arises from a two vehicle crash which occurred on August 20, 2011, at the intersections of State Routes 220 and 3007, when the vehicle driven by Additional Defendant’s decedent pulled out in front of the vehicle in which Plaintiff’s decedent was a passenger as she was traveling north on State Route 220. After the initial collision, Plaintiff’s decedent’s vehicle left the roadway and crashed into a headwall located about twenty feet from the fog line. The instant motion for partial summary judgment challenges the claim in Paragraphs 23(a) through (e) of Plaintiff’s Complaint, that the headwall was built too high (per PennDOT standards) and was a factual cause of Plaintiff’s decedent’s death. PennDOT asserts sovereign immunity with respect to this particular claim.¹

In response to the motion, Plaintiff argues that PennDOT is liable under either the personal property exception or the real estate exception to sovereign immunity.² The court will

¹ Plaintiff also claims PennDOT was negligent in designing and/or failing to modify the design of the intersection. This claim is not the subject of the instant motion.
² Plaintiff conceded at argument that the location of the headwall did not allow her to rely on the “highway exception”.

summarily dismiss Plaintiff's argument that the personal property exception applies as the headwall at issue was securely and permanently fastened to the earth. Therefore, only the real estate exception will be addressed.

The real estate exception to sovereign immunity is contained in Section (b)(4):

(b) Acts which may impose liability. -- The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

.....

(4) Commonwealth real estate, highways and sidewalks. -- A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph (5).

42 Pa.C.S. §§ 8522(b)(4). For the real estate exception to sovereign immunity to apply, the dangerous condition must cause the injury and "must derive, originate from, or have as its source the Commonwealth realty." Snyder v. Harmon, 562 A.2d 307, 311 (Pa. 1989). The exception will not apply where the injury is merely "facilitated" by the dangerous condition of the real estate and not caused by it. Babcock v. Commonwealth, Department of Transportation, 626 A.2d 672, 674 (Pa. Commw. 1993). The difference between causing an injury and merely facilitating an injury was explained by the Court in Babcock when the Court addressed the facts of that case:³ "Here, it is obvious that the tree or log did not cause the accident, but at most may have facilitated the injury or caused further injury. The accident was caused by the car leaving the road and shoulder, striking the embankment and overturning. Clearly, a log lying on the ground could not have injured Babcock unless her car had first slid off the highway, overturned and then slid further off the shoulder into the embankment." Id. The Court held the real estate exception did not apply. Id.

³ "Babcock's car left the cartway, went into a ditch on its side, overturned, and skidded along the ditch and up an embankment where it collided with the tree or log, which penetrated the car and struck Babcock." Babcock v. Commonwealth, Department of Transportation, 626 A.2d 672, 673 (Pa. Commw. 1993).

In the instant case, although the headwall may have “caused further injury”, it did not cause the accident; the vehicle which pulled in front of Plaintiff’s decedent’s vehicle caused the accident. Therefore, PennDOT is entitled to sovereign immunity as a matter of law.

ORDER

AND NOW, this day of September 2014, for the foregoing reasons, PennDOT’s Motion for Partial Summary Judgment is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Robert Elion, Esq.
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Hon. Dudley Anderson