

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KATHLEEN GRADY,
Plaintiff

vs.

MONTGOMERY AREA SCHOOL DISTRICT,
Defendant

: NO. 16-0978

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: CIVIL ACTION - LAW

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: Motion for Summary Judgment

OPINION AND ORDER

Before the court is Defendant's Motion for Summary Judgment, filed February 24, 2017. Argument on the motion was heard April 13, 2017.

In her Complaint, Plaintiff alleges that on November 22, 2014, as she was approaching the Montgomery Area High School to attend a play, she stepped up over a curb and placed her right foot on the sidewalk, immediately slipping and injuring herself. Plaintiff alleges that the "sidewalk was permeated with a thin coat of ice". She has brought claims of negligence and premises liability against the District and the High School for failing to remove the ice prior to the arrival of invited guests such as herself.

In its motion for summary judgment, Defendant argues that the only possible basis for liability is the sidewalk exception to the governmental immunity provided by the Political Subdivision Tort Claims Act (42 Pa.C.S. Section 8541 et seq.), and that the exception does not apply in this instance. The court agrees.

In Finn v. City of Philadelphia, 645 A.2d 320, 325 (Pa. Commw. 1994), the Commonwealth Court held that "in cases involving the sidewalk exception to governmental immunity, liability can be imposed on the government entity only if

the plaintiff's injury is caused by a defect or a dangerous condition which originates from the sidewalk itself. Such a defect or dangerous condition is limited solely to the negligent design or construction of the sidewalk or to a defect in the internal structural integrity of the sidewalk. ... We will not impose liability for injuries caused by a negligent failure of the government entity to remove a foreign substance from the real estate or the sidewalk. Since ice, snow, oil and grease are all foreign substances which can naturally accumulate on the sidewalk or real estate itself, government entities are not liable for injuries caused solely by the presence of these substances on a sidewalk or on real property."

While the Court also held that "we will permit the imposition of liability if there is an allegation and proof that the substance on the sidewalk or other real estate was caused to be on the real estate because of an improper design, construction, deterioration, or inherent defect of the real estate itself", *Id.*, and in her response to the motion Plaintiff argues that a crack in the sidewalk may have caused the ice to form there, the evidence offered in support of this argument does *not* support the imposition of liability *as a matter of law*. Plaintiff offers her own deposition testimony, as follows:

Q. We've talked about your complaint, we've talked about your answers to interrogatories, and now you've marked where you fell. I want to be clear on something because the area where you circled there does not appear to be a crack. And in your complaint and in your answers to interrogatories there's no mention of a crack. But at some point earlier you had mentioned the crack and water accumulating.

So in the pictures that are here, can you tell me where this crack is or what about this crack you believe caused the accident?

A. I don't know if it was the actual crack that caused the accident. I'm saying it was misting, raining all day. This crack could have

been filled as well as the messed up area on the curb. That was also iced over. The whole thing was all iced over.

Q. And that's what I'm getting to. Do you have any – it sounds like the ice caused your fall. Do we dispute that?

A. No.

Q. Does the crack have any involvement in the ice causing your fall?

A. Possibly, because it could have been filled with water and caused more ice.

Q. But you told me earlier that the entire sidewalk was covered with ice, correct?

A. It was.

Q. And that someone slipped in a different area of the sidewalk?

A. That's correct.

Q. So is it fair to say then whether or not the crack was there, the sidewalk would have been covered with ice?

A. I don't know that.

Q. Okay, But you at least know that somewhere other than where that – and I think you're saying crack. Are you talking about the seam between the sidewalk and the curb, this seam right here?

A. Yes.

Q. So looking at your circle with an X, right along where the top of the X is, you're talking about the line that runs horizontally on the picture between the curb and the actual sidewalk?

A. I'm talking also about the chipping of the curb.

Q. So you're saying there was chips on the curb?

A. There is chips on the curb.

Q. What did the chips on the curb have to do with you falling?

A. I don't know that it did.

Q. Is it fair to say that you don't know whether the crack had anything to do with you falling either?

A. I don't know.

Q. Okay. All you can tell me is that there was ice and that you slipped and fell?

A. I can tell you that it was completely covered with ice. The crack, the chipping, everything was covered with ice.

Exhibit 2, Plaintiff's Response, filed March 24, 2017, at pages 56-59. This evidence is nothing more than speculation and simply cannot support a reasonable inference that the seam between the curb and sidewalk was a defect that caused the ice to form on the sidewalk, such as would support the imposition of liability on the school district.

Accordingly, Defendant is entitled to judgment as a matter of law.

ORDER

AND NOW, this day of April 2017, for the foregoing reasons,
Defendant's Motion for Summary Judgment is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

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