

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN WEISER and DONNA WEISER,
Husband and Wife.
Plaintiffs

No. 13 - 280

v.

MICHELLE HECKMAN, and SOUTH
WILLIAMSPORT BOROUGH,
Defendants

SUMMARY JUDGMENT

OPINION AND ORDER

Before the Court is South Williamsport Borough's motion for partial summary judgment to limit its liability, if any, to secondary liability under the sidewalk exception of the Political Subdivision Tort Claims Act ("Tort Claims Act"), 42 Pa.C.S. § 8542 (7).¹ Upon review of the motion, argument, briefs, summary judgment record of evidence, case-law, and supplemental briefs, the Court agrees with South Williamsport Borough ("Borough") that its liability, if any, is limited to secondary liability under the sidewalk exception of the Tort Claims Act. The Court provides the following in support of its ruling.

FACTUAL BACKGROUND

A brief overview of the factual evidence adduced in favor of the non-moving parties in the summary judgment record follows. Prior to June 11, 2011, a Borough snow plow damaged the curb in front of Michelle Heckman's property while plowing a street owned by the Borough. The snow plow caused a v shaped cut in the curb. The curb touches the street and the steps leading to up to the sidewalk in front of Heckman's property. Steps directly on the other side of the sidewalk lead up from the sidewalk to Heckman's property, so that one could travel up the steps from the curb directly to Heckman's property. In addition to the curb in front of

¹ South Williamsport Borough is a local agency immune from tort liability unless the matter falls within a specific enumerated exception of the Tort Claims Act. Material issues of fact exist as to whether any liability may be imposed under the sidewalk exception and is not the subject of the motion for partial summary judgment. The parties raise issues of fact as to other requirements for liability, such as notice and negligence that are not the subject of this motion. The motion was held in abeyance until discovery was completed and responses were filed.

Heckman's property, the Borough snow plow damaged other areas of the curb on the same street in front of other property.

On a couple of occasions prior to June 11, 2011, Michelle Heckman reported the damage of the curb to the Borough and asked about it being fixed. The Borough told Heckman it would get back to her and take a look at the curb. The Borough never did. The Borough did not tell Heckman that the property owner was required to fix the curb in front of her property.

On June 11, 2011, Heckman's father fell on the damaged curb and sustained injuries. After that, Heckman complained about the damaged curb at a Borough meeting. At the meeting, the Borough informed Heckman that the Borough ordinance places responsibility for fixing the curb on the property owner abutting the street where the curb is located. In addition, the Borough told Heckman that she was not permitted to block off the area of damage with caution tape because it would interfere with access to a public street.

SUMMARY JUDGMENT

Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment ... if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. Keystone Freight Corp. v. Stricker, 31 A.3d 967, 971 (Pa. Super. 2011). A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is

entitled to summary judgment as a matter of law. Keystone, 31 A.3d at 971 (citing Young v. Pa. Dep't of Transp., 744 A.2d 1276, 1277 (Pa. 2000)).

DISCUSSION

The issue raised by the parties is whether recovery from the Borough for personal injuries suffered from a fall that occurred on June 11, 2011 is limited to secondary liability under the sidewalk exception under the Tort Claims Act under the circumstances of this case. More specifically, the issue is whether the streets exception applies when a Borough's employee and snow plow damaged a curb while plowing a street owned by the Borough and in front of private property. The Borough contends its liability is limited to secondary liability under the sidewalk exception of the Tort Claims Act because the matter does not fall within any other exception of the Torts Claim Act.² This Court agrees.

It is uncontested that the Borough, as a local agency, is immune from suit unless an enumerated exception under the Tort Claims Act applies. It is also well settled that exceptions under the Tort Claims Act must be narrowly construed in view of the legislature's public policy to insulate local agencies from tort liability. See, Love v. Philadelphia, 518 Pa. 370, 375-76, 543 A.2d 531, 533 (Pa. 1988). In this case, the Court concludes that the curb does not fall within a narrowly construed definition of street and therefore does not meet the exception.³

² This Court previously ruled that the vehicle exception did not apply to injuries sustained by the fall because the vehicle was not in operation at the time the injuries were sustained. *See, e.g., Love v. Philadelphia*, 518 Pa. 370, 375-76, 543 A.2d 531, 533 (Pa. 1988)

³ The streets exception provides the following in relevant part. "A dangerous condition 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 (6). The sidewalk exception provides the following in relevant part. "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. When a local agency is liable for damages under this paragraph by reason of its power and authority to require installation and repair of

Heckman contends the streets exception applies because the curb is not as close to the sidewalk as a typical curb and because the local agency itself allegedly caused the damage. The Court believes the Commonwealth Court's decision in Gramlich v. Lower Southampton Twp., 838 A.2d 843 (Pa. Comwlth. 2003) is most instructive to the instant matter. In Gramlich, the Commonwealth Court concluded that the streets exception did not apply to a drainage hole located on the unpaved portion of the street where the property owner had their lawn, mailbox, driveway and drainage hole. The focus of the Court was not upon the alleged negligence of the parties.⁴ Instead the Commonwealth Court focused on the location of the alleged defect, whether vehicular travel occurred on that unpaved portion of the otherwise paved street, and whether the Township assumed responsibility for that portion of the street. The Commonwealth Court has also stated that railroad ties acting to curb the street were "not a dangerous condition in the city's right of way for purposes of the exceptions to immunity under 42 Pa.C.S. § 8542(b)(6)(i) and (7) in Couto-Pressman v. Richards, 63 A.3d 856 (Pa. Comwlth. 2013). Lastly, Pennsylvania Courts have noted that "[p]ublic bodies normally assume responsibility for the property within the curb lines, i.e., the gutters and the roadway or cart way. On the other hand, the abutting property owner retains responsibility for the conditions outside the curb lines, i.e., the sidewalk, the tree planting strip, and the curb itself." Campbell v. Temple Univ., 78 Pa.D.&C.4th 1, 17 n.4 (C.P. Philadelphia 2005), *citing*, Fisher v. City of Philadelphia, 112 Pa. Super. 226, 170 A. 875 (1934).

In the present case, the curb is not part of the place of vehicular travel and the Borough ordinance places primary responsibility for the maintenance of the curb on the property owner. Borough of South Williamsport, PA. Code, Chapter 21, Section 21-201. Therefore, the Court

sidewalks under the care, custody and control of other persons, the local agency shall be secondarily liable only and such other persons shall be primarily liable. 42 Pa.C.S. § 8542 (7).

⁴ Unlike the instant case where the negligence of the local agency is alleged to have caused the defect, in Gramlich the property owner's allegedly created an open hole for a drain pipe without notifying the Township.

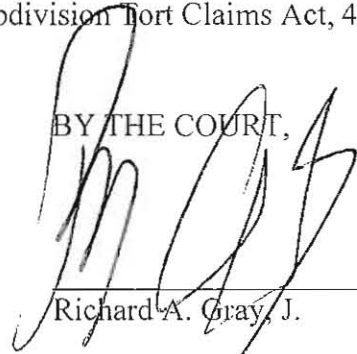
concludes the curb does not fall within the streets exception. As noted by our Pennsylvania Supreme Court, “notwithstanding what may be the actual tort of [a political subdivision’s] employees[,] “ [t]he legislature, for reasons of policy, reasons we are not entitled to dilute for sympathy or even outrage at specific instances of blatant tort, has decided that such an immunity does exist, and we must abide, sometimes leaving dreadful injuries, negligently inflicted, uncompensated. Love v. Philadelphia, 518 Pa. 370, 376, 543 A.2d 531, 533 (Pa. 1988)

Accordingly, the Court enters the following order.

ORDER

AND NOW, this 13th day of **October, 2017** it is ORDERED and DIRECTED that the Borough’s motion for partial summary judgment is GRANTED. It is further ORDERED and DIRECTED that South Williamsport Borough’s liability, if any, is limited to secondary liability under the sidewalk exception of the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8542 (7).

BY THE COURT,



Richard A. Gray, J.

October 13, 2017
Date

cc: April McDonald, CST
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