



REID v. CITY OF PHILADELPHIA 2008 Pa. Lexis 1879 (October 21, 2008)

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FACTUAL BACKGROUND

In March of 2003, Joseph and Sarah Reid attempted to cross a sidewalk abutting Philadelphia's 39th District Police Station. Mr. Reid slipped and fell, sustaining ankle injuries. The Reids filed a personal injury action against the City, alleging that it was negligent in failing to remove ice and snow from the sidewalk. The City raised governmental immunity as an affirmative defense pursuant to the Tort Claims Act ("Act"), 42 Pa. C.S. §8541, et seq.

At trial, the Reids established that the City negligently failed to remove the ice and snow from the sidewalk and allowed its employees to park vehicles on the sidewalk, thus compounding a dangerous situation. The trial court found the City primarily liable for Mr. Reid's injuries, under the Act's Real Property Exception clause, 42 Pa. C.S. §8542(b)(3) (providing real property exception to governmental immunity). The City appealed.

The Pennsylvania Commonwealth Court affirmed, holding that where a municipality is the owner of real property that adjoins the sidewalk, the municipality can be held primarily liable under §8542(b)(3) for its failure to satisfy the obligation imposed on all owners of real property to make their sidewalks safe for pedestrian travel. Further review was sought by the Pennsylvania Supreme Court.

DISCUSSION

The sidewalk exception to immunity imposes a heavier burden of proof on a Plaintiff than the real property exception. The real property exception allows the imposition of liability on a public agency if the agency causes injury due to its negligence in the care, custody or control of its real property. The sidewalk exception requires not only proof of negligence, but also proof that the City had notice of the dangerous condition and an opportunity to remedy the condition, and failed to do so. The Reids did not assert the sidewalk exception clause here,

but instead claimed that the real property exception applied.

The Pennsylvania Supreme Court concluded that the Act is free from ambiguity and that the legislature explicitly distinguished “sidewalks” from “real property” when they adopted the Tort Claims Act. The former is clearly excluded from the latter for purposes of immunity. A plain reading of §8542(b)(3) reveals that the legislature intended that this clause, establishing the real property exception, be inapplicable to injuries arising from sidewalk defects, even if the sidewalks abut local agency property. Accordingly, the Supreme Court determined that the real property exception clause does not apply to sidewalks, even those abutting public property. The decision of the Commonwealth Court was reversed.

EDITORIAL COMMENT

The sidewalk exception also recognizes, in certain cases, a distinction between “on” and “of”. For example, a tree falling “on” the sidewalk is not a dangerous condition “of” the sidewalk for which liability may be found. Dangerous conditions “of” sidewalks largely deal with their structural integrity. This aspect of the sidewalk exception was not discussed in the decision.