

The Legal Intelligencer

Copyright 2009. Incisive Media US Properties, LLC. All rights reserved.

Court: City's Liability Limited on Sidewalk 'Slip and Falls'

Alan Nochumson And R. July Simpson

05-18-2009

The common law has traditionally imposed on property owners the duty to maintain the sidewalks abutting their properties. However, pedestrians should be wary of a gap in coverage created by the Pennsylvania Legislature that could leave an injured pedestrian with no liable party to recover from if the injury occurred on a sidewalk that is adjacent to a street owned by a governmental entity.

In *Reid v. City of Philadelphia*, the Pennsylvania Supreme Court recently overruled the Commonwealth Court's decision in *Sherman v. City of Philadelphia* that "rewrote" an exception to governmental immunity that imposes liability for torts arising out of the care, custody or control of real property to include sidewalks that adjoin real property owned by the municipality.

In *Reid*, the plaintiff filed a negligence action against the city of Philadelphia after injuring his ankle when he slipped and fell on a sidewalk outside Philadelphia's 39th District Police Station. The plaintiff in *Reid* alleged that he fell because of the city's failure to remove ice and snow from the sidewalk.

The city raised the affirmative defense of governmental immunity pursuant to the Political Subdivision and Tort Claims Act, which provides for governmental liability arising from the care, custody or control of real property possessed by a governmental entity.

Using this exception, the trial court found the city was primarily liable for the plaintiff's injuries because of its negligence in failing to remove the ice and snow from the sidewalk, a dangerous situation that was exacerbated by allowing their employees to park their vehicles on the sidewalk.

On appeal, the Commonwealth Court affirmed the trial court's ruling basing upon the rationale set forth in *Sherman v. City of Philadelphia*, wherein the Commonwealth Court previously held that "where a municipality is the owner of real property that adjoins a sidewalk, the municipality can be held primarily liable ... as property owner for its failure to satisfy its obligations to make sidewalks safe for pedestrian travel."

The Commonwealth Court also cited to a Supreme Court decision in *Walker v. Elby* as having "tacitly" accepted the *Sherman* decision. In *Walker*, the Supreme Court concluded that "for purposes of the sidewalks exception clause, a state highway running through local agency property is considered a local-agency-owned street," and therefore "any injuries occurring on a sidewalk adjacent to a state-designated highway fell within the 'right of way of a street owned by the local.'" Therefore, the sidewalk exception clause to government immunity would apply.

In *Reid*, however, the Supreme Court agreed with the argument made by the city that the real property exception does not apply to sidewalks and should be distinguished from the separate sidewalk exception clause also contained in the act. The act specifically states in the real property exclusion clause that sidewalks are not to be included in the definition of "real property."

Moreover, the sidewalk exception clause in the act imposes a higher burden of proof than the real property clause by additionally requiring 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." The clause also only imposes secondary liability where "such other person shall be primarily liable."

The Supreme Court determined that "[a] plain reading of [the real property exception clause] reveals the legislatures intended the clause establishing the real property exception be inapplicable to injuries arising from sidewalks, even if the sidewalk abuts" governmentally owned property.

Revisiting *Sherman*, the Supreme Court said, "We disagree with *Sherman* to the extent it expanded [the real property exception clause] definition of real property to include sidewalks that abut public property."

The Supreme Court looked to the dissenting opinions in *Sherman* and agreed that the *Sherman* majority "improperly rewrote the act under the pretext of reaching a desired result." Specifically, the *Sherman* majority had determined that the "General Assembly, when drafting the exceptions to governmental immunity, did not envision nor consider the situation where the local agency owns the property adjacent to the sidewalk on which the injury occurs and the commonwealth owns the street abutting that sidewalk" and therefore there was a "gap in coverage" under the act resulting in no party being held liable for those injuries occurring on an agency maintained sidewalk that is adjacent to a state highway.

The Supreme Court, however, refused to allow the gap to be closed by the *Sherman* decision. Partially quoting one of the *Sherman* dissenters, the Supreme Court stated that "[e]ven if the legislature failed to contemplate the situation where the local agency owns the property adjacent to the sidewalk, it does not follow that the solution is for this [C]ourt to engraft language onto the legislature's definition of real property where the engrafted language runs directly contrary to the express words. Rather, the solution is to give full effect to the clear and unambiguous language ... and urge the legislature to resolve the problem by enacting proper amendments to the statute."

In support of its ruling, the Supreme Court explained, "[i]t is only when the statute's words are not

explicit that the legislature's intent may be ascertained" and "[w]hen the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent."

The Supreme Court also rejected the plaintiff's alternative argument, which was further geared toward access to the real property exception: that "the city transformed the sidewalk into a parking lot because it regularly allowed its employees to park vehicles on the sidewalk." While parking lots are not excluded under the real property exception, the Supreme Court believed that the plaintiff was unable to support the contention that a sidewalk could be transformed into a parking lot "merely by parking an indeterminate number of vehicles on it."

LESSONS LEARNED

Until the time comes when the Legislature sees fit to address this oversight of this idiosyncratic situation, governmental immunity will shield governmental entities from legal liability under similar circumstances. Pedestrians throughout the city should thus be mindful of this while walking on sidewalks on properties governmentally owned and maintained. •

Alan Nochumson is the sole shareholder of Nochumson P.C. where his primary practice areas consist of real estate, litigation, employment and labor and land use and zoning. He is also president of Bear Abstract Services where he offers comprehensive title insurance, title examination and closing services. He may be reached by telephone at 215-399-1346 or by e-mail at anochumson@nochumson.com .

R. July Simpson, a second-year student at Drexel University's Earle Mack School of Law, is interning with the firm for the winter and spring quarters. She can be reached by telephone at 215-399-1346 or by e-mail at jsimpson@nochumson.com .