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2011 IL App (3d) 100640-U

Order filed December 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

ANNETTE L. REES, Administrator of the Estate)	
of CAMDEN J. BELFIELD, Deceased.)	
)	Appeal from the Circuit Court
)	of the 10 th Judicial Circuit,
Plaintiff-Appellant,)	Peoria County, Illinois
)	
v.)	
)	
LGSA, INC., an Illinois not-for-profit corporation,)	Appeal No. 10-0640
OAK GROVE SCHOOL DISTRICT #68, BOARD)	Circuit No. 08-L-273
OF EDUCATION OF OAK GROVE SCHOOL)	
DISTRICT # 68, MARC DEVORE, in his official)	
capacity as superintendent of OAK GROVE)	
SCHOOL DISTRICT #68, GERALD)	
BROOKHART, in his official capacity as Peoria)	Honorable Joe R. Vespa,
County Regional Office of Education)	Judge Presiding.
Superintendent,)	
)	
Defendants-Appellees.)	

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly determined the school district and the regional superintendent did not owe a duty to the individual decedent after applying the public duty rule and then dismissed counts III, IV, V, VI, IX and X of the fourth

amended complaint. Further, the Construction Statute of Repose barred counts VII, VIII, IX, and X of plaintiff's fourth amended complaint and warranted dismissal of those counts.

¶ 2 Plaintiff Annette L. Rees, the mother of a deceased minor, filed a ten-count, fourth amended complaint alleging that various acts or omissions of the defendants caused decedent's death, on July 20, 2008. The fourth amended complaint alleged decedent was electrocuted after coming into contact with a light pole or its electrical housing while attending a softball tournament sponsored by LGSA, Inc., a not-for-profit corporation, at a softball field located on school district property. Each of the defendants filed motions to dismiss certain counts of the fourth amended complaint applicable to each defendant.

¶ 3 The court applied the public duty rule and found neither the statutes nor the common law gave rise to a duty owed by the District defendants and regional superintendent towards this individual decedent. Accordingly, the court dismissed counts III, IV, IX, and X against the District defendants, and dismissed counts V and VI against the superintendent after applying the public duty rule. The court also dismissed counts VII and VIII against LGSA, and counts IX and X against the District defendants, based on the construction statute of repose.

¶ 4 Plaintiff appeals the court's dismissal of counts III through X on those grounds. We affirm.

¶ 5 **BACKGROUND**

¶ 6 On September 17, 2008, plaintiff-appellant Annette L. Rees (plaintiff), the mother and administrator of the estate of Camden J. Belfield, deceased, filed an initial complaint based on negligence against LGSA. The original complaint alleged Belfield's death occurred, on July 20, 2008, when he was a spectator at a softball tournament organized by LGSA, Inc. (LGSA), an Illinois not-for-profit corporation. The complaint alleged Belfield was electrocuted during the

tournament after coming into contact with a faulty light pole and/or electrical “facility” located near the softball field owned by Oak Grove School District #68 (District).

¶ 7 Amended complaints named additional defendants including: the District; the Board of Education for the District; Marc Devore, in his official capacity as the superintendent of the District (collectively referred to as the “District defendants”); and Gerald Brookhart, the Peoria County Regional Office of Education Superintendent (Brookhart). The amended complaints also named LGSA as a defendant.

¶ 8 Plaintiff filed the fourth and last amended complaint on April 22, 2010. Counts I and II of this fourth amended complaint alleged general negligence counts against defendant LSGA pursuant to the Survival Statute and Wrongful Death Act, respectively. Counts VII and VIII alleged negligence counts against defendant LSGA regarding the improper supervision of the of the light pole installation, in 1994, under the Survival Statute and Wrongful Death Act, respectively.

¶ 9 The fourth amended complaint includes counts III and IV, against the District defendants, which alleged willful, wanton and reckless acts which violated the Health/ Life Safety Code pursuant the Survival Statute and Wrongful Death Act, respectively. Counts IX and X against the District defendants alleged willful, wanton, and reckless acts in allowing the negligent installation of the light poles in 1994, pursuant to the Survival Statute and Wrongful Death Act, respectively. Plaintiff’s fourth amended complaint also includes counts V and VI, against Brookhart, which alleged willful, wanton, and reckless acts in violation of Brookhart’s obligations under the School Code and Health/ Life Safety Code, pursuant the Survival Statute and Wrongful Death Act, respectively.

¶ 10 On May 10, 2010, Brookhart filed a motion to dismiss counts V and VI of the fourth amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)), on grounds that Brookhardt did not owe a duty of care to the individual decedent, based on the public duty rule, and also was personally immune from liability under the Tort Immunity Act. Alternately, Brookhart alleged these counts failed to state a cause of action against him. Brookhart alleged plaintiff's fourth amended complaint did not allege a special duty exception to the public duty rule that would create a duty owed by Brookhart to the decedent. Consequently, Brookhart asked the court to dismiss counts V and VI, with prejudice, because plaintiff failed to plead sufficient facts to state a cause of action in these counts.

¶ 11 On May 21, 2010, the District defendants also filed a motion to dismiss counts III, IV, IX, and X, with prejudice, under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)). As to counts III, IV, IX, and X, the District defendants argued plaintiff improperly attempted to plead two separate theories of recovery in single counts, both negligence and willful and wanton conduct. Secondly, the District defendants claimed that plaintiff's pleadings were insufficient to state valid causes of action, based on the statutes identified in the pleadings, due to the public duty rule. Furthermore, even if a duty existed, the District defendants claimed they were immune from negligence liability pursuant to the Tort Immunity Act since plaintiff did not allege that any exceptions to that statutory tort immunity existed. Additionally, regarding counts IX and X, the District defendants argued that, even if the plaintiff properly alleged a special duty of care beyond the limitations of the public duty rule by special exception, this cause of action, based on negligent construction and installation of the light poles in 1994, was barred by the 10-year Illinois Construction Statute of Repose. 735 ILCS

5/13-214(b) (West 2008).

¶ 12 On May 27, 2010, LGSA filed their own motion to dismiss counts VII and VIII of the fourth amended complaint, under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)). These counts alleged LGSA “hired or permitted an independent contractor” to negligently install the lighting system for the softball fields in 1994. LGSA’s motion to dismiss also argued that the Construction Statute of Repose (735 ILCS 5/13-214(b)(West 2008)) barred plaintiff’s action against them because more than 10 years had passed since the installation of the lights. Additionally, LGSA moved to dismiss counts VII and VIII because LGSA could not be held vicariously liable for the alleged negligent work of the independent contractor who installed the lights in 1994, therefore, plaintiff’s fourth amended complaint failed to sufficiently establish that LGSA owed a non-delegable duty to decedent for the alleged negligent work of the independent contractor.

¶ 13 On July 22, 2010, after conducting hearings on the various motions to dismiss the counts of the fourth amended complaint, the trial court dismissed counts III through X of that complaint, with prejudice. Regarding Counts III, IV, IX, and X, pertaining to the District defendants, and Counts V and VI, pertaining to Brookhart, in his official capacity, the court granted the motion to dismiss counts III, IV, V, VI, IX and X, with prejudice, after applying the public duty rule. Regarding counts VII and VIII against LGSA, the court found LGSA was protected by the Construction Statute of Repose and dismissed those counts with prejudice. Similarly, regarding counts IX and X against the District defendants regarding construction in 1994, the court also found the District was protected by the Construction Statute of Repose and dismissed these counts with prejudice.

¶ 14 Thereafter, on July 30, 2010, at plaintiff's request, the court entered an order, pursuant to Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a)(eff. Feb. 26, 2010)), which provided:

“Pursuant to Supreme Court Rule 304(a), the Court finds that there is no just reason for delaying either the enforcement or appeal of the dismissal, with prejudice, of Counts III - X of Plaintiff's Fourth Amended Complaint made in the Order entered July 22, 2010.”

Plaintiff filed a timely appeal challenging the dismissal of those counts.

¶ 15 ANALYSIS

¶ 16 In this appeal, plaintiff contends that the trial court erred by granting the motions to dismiss counts III, IV, V, and VI of the Fourth Amended Complaint, with prejudice, after applying the public duty rule to those counts. Plaintiff argues the public duty rule is no longer constitutionally sound and, even if it remains sound in some instances, it is not applicable to the case at bar. Additionally, plaintiff argues that, the Tort Immunity Act codifies certain common law duties which were sufficiently plead in counts III, IV, V, and VI of the fourth amended complaint. Plaintiff alternately asserts that the relevant statutes in the School Code and Health/Life Safety Code created a special duty exception to the public duty rule, triggering a specific duty owed by the District defendants and Brookhart to the decedent. Finally, plaintiff contends the court improperly relied on the Construction Statute of Repose to dismiss counts VII, VIII, IX, and X of the fourth amended complaint, with prejudice.

¶ 17 On December 27, 2010, this court allowed the Illinois Trial Lawyers Association (ITLA) to file an *amicus curiae* brief. ITLA focuses solely on whether the public duty rule is contrary to the 1970 Illinois constitution and requests this court to consider the *Barnett* case (*Barnett v. Zion*

Park District, 171 Ill. 2d 378 (1996)) in support of the contention that the public duty rule is unconstitutional.

¶ 18 The District defendants and Brookhart both argue that the public duty rule is not unconstitutional. The District defendants and Brookhart also agree the Tort Immunity Act, by definition, creates only defenses and immunities and does not create additional duties owed by the government to certain individuals. Furthermore, both argue plaintiff has not properly alleged a special duty exception to the public duty rule based on the allegations of willful and wanton conduct by applying specific provisions of the Tort Immunity Act.

¶ 19 In addition, Brookhart argues that the doctrine of *stare decisis* requires this court to conclude that the public duty rule is constitutionally sound. Brookhart also argues that he is immune from liability according to the statutes relied on by plaintiff in the cause of action against him.

¶ 20 Finally, LGSA and the District defendants argue that the trial court correctly dismissed counts VII, VIII, IX, and X of the fourth amended complaint because the Construction Statute of Repose barred plaintiff's claims related to the construction work performed by an independent contractor in 1994. In the alternative, these defendants claim that an employer is not liable for the negligent work of an independent contractor.

¶ 21 I. The Public Duty Rule

¶ 22 Initially, when ruling on a section 2-619 motion to dismiss, the trial court must interpret all pleadings and supporting documents in a light most favorable to the nonmoving party.

DeSmet ex rel. Estate of Hays v. County of Rock Island, 219 Ill. 2d 497 (2006). Our review of a section 2-619 dismissal by the trial court is *de novo*. *De Smet*, 219 Ill. 2d at 504.

¶ 23

A. Constitutionality of the Public Duty Rule

¶ 24 The order of July 22, 2010, dismissing Counts III, IV, V, VI, IX and X of the fourth amended complaint, does not expressly address plaintiff’s argument that the public duty rule is unconstitutional. However, in spite of this court’s initial reservations, all parties to this appeal agree that this court has jurisdiction to consider the constitutionality of the public duty rule when deciding the outcome of this appeal. Thus, we briefly include a constitutional analysis.

¶ 25 It is well settled that, in 1959, our supreme court abolished the sovereign immunity of public entities in tort actions by written decision. *Molitor v. Kaneland Community Unit District No. 302*, 18 Ill. 2d 11 (1959). In response to the decision issued by our supreme court in *Molitor*, the General Assembly enacted the Local Governmental and Governmental Employees Tort Immunity Act of 1965 (Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* West 1966)). The legislature stated:

“The purpose of this Act is to protect local public entities and public employees from liability arising from the operation of government. It grants only immunities and defenses.” 745 ILCS 10/1-101.1(a) (West 2008).

Following *Molitor* and the passage of the Tort Immunity Act, the 1970 Illinois Constitution implicitly recognized both *Molitor* and the Tort Immunity Act, and provided, “Except as the General Assembly may provide by law, sovereign immunity in this State is abolished.” Ill. Const.1970, art. XIII, § 4.

¶ 26 Both plaintiff and the ITLA, in its *amicus curiae* brief, contend that the ratification of 1970 Illinois Constitution abolishes sovereign immunity other than those immunities identified by the General Assembly with the passage of the Tort Immunity Act. Thus, plaintiff urges this

court to conclude the common law “public duty rule” is contrary to the provisions of our state constitution.

¶ 27 This issue of whether the common law public duty rule may be applied by our courts to determine whether a duty exists, in light of the Illinois Constitution, has been considered by our supreme court in several cases. See *Barnett*, 171 Ill. 2d 378; *Harinek v. 161 North Clark St. Ltd. Partnership*, 181 Ill. 2d 335 (1998). In *Harinek*, our supreme court held that, despite abolishing common law sovereign immunity in the *Molitor* decision (*Molitor*, 18 Ill. 2d 11)), the public duty rule remains viable. *Harinek*, 181 Ill. 2d at 345 (citing *Huey v. Town of Cicero*, 41 Ill. 2d 361, 363 (1968)); see also *Barnett*, 171 Ill. 2d at 386. Our supreme court has consistently applied the public duty rule when engaging in the required threshold duty analysis to determine whether a legal *duty* is owed by the government entity to a plaintiff pursuant to the performance of required governmental services. See *Burdinie v. Village of Glendale Heights*, 139 Ill.2d 501 (1990)(overruled on other grounds); *Barnett*, 171 Ill. 2d at 386; *Zimmerman v. Village of Skokie*, 183 Ill. 2d 30 (1998); *Harinek*, 181 Ill. 2d at 345.¹ In fact, the *Zimmerman* court stressed:

“The distinction between an immunity and a duty is crucial, because only if a duty is found is the issue of whether an immunity or defense is available to the governmental entity considered: ‘[u]nlike immunity, which protects a municipality from liability for breach of an otherwise enforceable duty to the plaintiff, the public duty rule asks whether there was any enforceable duty to the plaintiff in the first place.’” *Zimmerman*, 183 Ill. 2d at 46.

¹ This court recently applied our supreme court’s holdings in *Zimmerman* in the case of *Donovan v. Village of Ohio*, 397 Ill. App. 3d 844 (2010).

¶ 28 Clearly, we are required to follow the decisions of our supreme court, regarding the viability of the public duty rule, according to the doctrine of *stare decisis*. See *O’Casek v. Children’s Home and Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008). Therefore, we conclude that the public duty rule does not violate the provisions of the Illinois Constitution.

¶ 29 Next, based on the allegations of this complaint, we must consider whether the public duty rule precludes any cause of action based on the purported negligent exercise of the District’s and Brookhart’s statutory authority.

¶ 30 **B. Applicability of the Public Duty Rule**

¶ 31 In 1990, our supreme court explained the common law principles of the public duty rule, as follows:

“Illinois courts have generally upheld the common law principle that municipalities [public entities] are not liable in tort to members of the general public for failure to enforce local laws or ordinances [citations] or for the negligent exercise of municipal authority pursuant to a governmental duty and for a governmental purpose.” *Burdinie*, 139 Ill. 2d at 507-08 (citing *Fryman v. JMK/Skewer, Inc.*, 137 Ill. App. 3d 611, 614 (1985)).

¶ 32 According to Counts III, and IV of plaintiff’s fourth amended complaint, the source of the *duty* the District defendants owed to this individual decedent is founded on the statutory requirements set out in the Health/ Life Safety Code (23 Ill. Admin. Code § 180.10 *et seq.* (eff. Sept. 25, 2007)). Section 180.40(a) of the Health/ Life Safety Code, provides:

“Each local school board shall maintain and operate every facility under its jurisdiction in full and continuous compliance with the requirements of this Part and shall visit and

inspect the several schools for this purpose as the interests of the district may require.”

23 Ill. Admin. Code § 180.40(a)(eff. Sept. 25, 2007).

According to counts V and VI of plaintiff’s fourth amended complaint, the source of the *duty* Brookhart owed to this individual decedent, is founded in the statutory requirements set out in various sections of the School Code in addition to the Health/ Life Safety Code. In counts V and VI, plaintiff alleges the School Code requires the regional superintendent to exercise his official authority to control and supervise all school districts in the county (105 ILCS 5/3-14.2 (eff. Nov. 26, 1979)); to inspect and survey all public schools under his supervision yearly (105 ILCS 5/3-14.21 (eff. Jan. 1, 2007), (23 Ill. Admin. Code § 180.300 (eff. Sept. 25, 2007)); to order any dangerous conditions, found during inspections, to be remedied or removed, including defective or improperly installed electrical wiring (23 Ill. Admin. Code § 180.410 (eff. Sept. 25, 2007)); and, during construction, to ensure that the qualified inspectors inspect the project for compliance with the various required codes (23 Ill. Admin. Code § 180.220 (eff. Sept. 25, 2007)).

¶ 33 This court has previously determined that “a governmental body, when exercising its authority pursuant to a governmental duty and for a governmental purpose, cannot be liable to a private plaintiff for the negligent exercise of that authority.” *Fryman*, 137 Ill. App. 3d at 614; see also *Donovan*, 397 Ill. App. 3d at 849-50. Since the fourth amended complaint alleges the District defendants and Brookhart failed to act or negligently carried out their statutory authority to provide certain services to the public, we conclude the public duty rule is applicable to the allegations concerning the conduct of both the District defendants and Brookhart when acting in their official capacity as alleged in Counts in counts III, IV, V, VI, IX, and X of the fourth amended complaint. Therefore, we conclude the trial court properly applied the public duty rule

based on the circumstances presented in this case.

¶ 34 Next, we consider whether plaintiff's fourth amended complaint sufficiently alleged that a special duty exception to the public duty rule existed as plaintiff alternatively contends..

¶ 35 C. Whether a Special Duty Exception Exists

¶ 36 To avoid the harsh result following the application of the public duty rule, plaintiff alternatively suggests that, if the public duty rule survives a constitutional analysis, the decedent falls under a special duty exception to the public duty rule. Our supreme court has addressed the issue of special duty exceptions to the public duty rule by holding:

“The special duty can arise in two instances: when the [local public entity or employee] acts in a private instead of a governmental capacity *** or when it develops a ‘relationship’ to an individual. [Citation].

This ‘relationship’ is created when circumstances arise in which it becomes the duty of the municipality or public official to act on behalf of a specific individual, as opposed to the public at large. In such a case, the negligent failure to carry out this ‘special’ duty is actionable. [Citation].” *Burdinie*, 139 Ill. 2d at 508.

We observe that the complaint does not allege the District defendants or Brookhart engaged in some non-governmental function, such as hosting this private softball tournament. Thus, we turn to the second consideration related to determining whether defendants shared a special relationship with this decedent that created a special duty exception to the public duty rule in this case. Here, plaintiff argues on appeal that the provisions of the Health/ Life Safety Code create a special relationship between the District defendants and Brookhart concerning “schoolchildren,” because the purpose of the Health/ Life Safety Code is to “establish minimum

standards for public school facilities which will protect the health, safety, and general welfare of pupils, school personnel, and others who use them.” 23 Ill. Admin. Code § 180.10(a).

¶ 37 Again, our supreme court has provided specific guidance by outlining the four factors necessary to create a special duty, owed by public officials to certain individuals, when carrying out their official and statutory responsibilities. In *Leone v. City of Chicago*, 156 Ill. 2d 33 (1993), our supreme court held as follows:

“ (1) [T]he municipality must be uniquely aware of the particular danger or risk to which plaintiff is exposed; (2) there must be specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be affirmative or willful in nature; and (4) the injury must occur while the plaintiff is under the direct and immediate control of municipal employees or agents.” *Leone*, 156 Ill. 2d at 37 (citing *Burdinie*, 139 Ill.2d at 507-08)).

Even assuming, *arguendo*, the fourth amended complaint properly plead the first three factors required for a special duty to exist, the fourth factor is not addressed in the complaint. Focusing on the fourth factor set out above, it is apparent that plaintiff’s complaint does not attempt to allege decedent was under the direct control of either the District, its employees, or Brookhart during the private softball tournament organized by LGSA and attended by decedent as a spectator. In the absence of this allegation, the public officials named as defendants in this case could not be held liable for allegedly negligently failing to carry their authority as provided by statute.

¶ 38 After carefully examining the fourth amended complaint, we conclude plaintiff, in this instance, has not plead the four factors necessary to sufficiently allege that the District

defendants or Brookhart owed a special duty to decedent.

¶ 39 D. Willful and Wanton Acts by District Defendants

¶ 40 Plaintiff's fourth amended complaint also alleges willful and wanton misconduct related to the construction and ongoing maintenance of the electrical facilities at the ball field to avoid the public duty rule's effects on the fourth amended complaint. Plaintiff claims the Tort Immunity Act codifies an additional common law duty to refrain from acting with willful and wanton conduct, imputed to the District defendants and Brookhart, based on sections 3-102(a) and 3-106. 745 ILCS 10/3-102(a), 3-106 (West 2008). Defendants contend that plaintiff misconstrues the provisions of the Tort Immunity Act, regarding willful and wanton acts of local public entities or public employees to create an independent duty of care owed to decedent which does not exist at the common law.

¶ 41 We begin again, by examining the statutes plaintiff relies upon to support this contention. Although plaintiff cites section 3-102(a) and 3-106 of the Tort Immunity Act, we conclude that section 3-106 is most applicable to the facts in the instant case. Section 3-106 of the Tort Immunity Act provides:

“Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, *unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.*” (Emphasis added). 745 ILCS 10/3-106 (West 2008).

Plaintiff contends, by alleging willful, wanton, and reckless conduct by Brookhart and the

District defendants. as it related to a public facility, her fourth amended complaint sufficiently plead acts or omissions committed by the District defendants and Brookhart which impose a separate common law duty to refrain from the willful and wanton conduct that injured decedent which exists independently from the public duty rule.

¶ 42 We disagree. The Tort Immunity Act does not create duties, it only grants immunities and defenses. 745 ILCS 10/1-101.1(a) (West 2008). A duty cannot be created by simply including allegations of willful and wanton conduct and urging this court to engage in the reverse application of the Tort Immunity Act .

¶ 43 Again, we emphasize, a court must first determine that some duty of care exists for the public entity, before deciding whether the governmental unit or employee is immune from negligence liability based on willful and wanton acts or omissions. *Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 490 (2002); *Barnett*, 171 Ill. 2d at 386-388. Similarly, we emphasize that a court must first determine that the entity owes some statutory or common law duty of care to a specific individual, before deciding whether the governmental unit or official has breached that specific duty of care resulting in liability.

¶ 44 Accordingly, we conclude that the trial judge properly found that the language of the Tort Immunity Act does not codify an existing duty or create an additional common law duty for governmental entities to avoid acting in a willful or wanton manner when exercising their statutory authority to provide public services.

¶ 45 II. Construction Statute of Repose

¶ 46 Plaintiff next argues that defendant LGSA and the District defendants were liable under a non-delegable duty to plaintiff's decedent, as alleged in counts VII, VIII, IX, and X, and the trial

court erred in dismissing those counts based upon the Illinois Construction Statute of Repose. 735 ILCS 5/13-214(b) (West 2008). Defendant LGSA and the District defendants contend that the trial properly dismissed those counts based on that statute.

¶ 47 The relevant portion of section 13-214(b) of the Code of Civil Procedure provides:

“No action based upon tort, contract or otherwise may be brought against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property after 10 years have elapsed from the time of such act or omission. However, any person who discovers such act or omission prior to expiration of 10 years from the time of such act or omission shall in no event have less than 4 years to bring an action as provided in subsection (a) of this Section.” 735 ILCS 5/13-214(b) (West 2008).

¶ 48 The facts relevant to this issue involve negligence that occurred during the original installation of the light poles and light facilities, in 1994, completed by an independent contractor. Plaintiff’s fourth amended complaint alleges that both LGSA and the District defendants hired or permitted an independent contractor to construct high voltage electrical facilities, including light poles, around the softball fields, in an area where children and spectators would be expected to be present. These counts allege that both LGSA and the District defendants owed a “non-delegable duty” to decedent to “see that reasonable precautions were taken against the peculiar and/or special danger of installing high voltage electrical facilities.” Further, plaintiff alleged, as a result of the acts or omissions of the independent contractor, decedent sustained fatal injuries from electrical shock. These counts allege that LGSA’s and the District defendants’ “negligent failure to comply with its non-delegable duty,” were the direct

and proximate cause of decedent's injuries.

¶ 49 LGSA and the District defendants have distinct positions with regard to the construction itself. LGSA did not own the property and is not alleged to have retained the independent contractor in this case. The District defendants, as owners of the property, retained the independent contractor to install the lighting system in 1994. However, they both raise Construction Statute of Repose as their defenses, based on the language in plaintiff's pleadings that they did not properly supervise or inspect the installation of the lighting. 735 ILCS 5/13-214(b) (West 2008).

¶ 50 Since the construction project occurred in 1994, and the decedent's injuries occurred in 2008, more than 10 years had elapsed from the time the light poles and facilities were allegedly installed negligently. Hence, the trial court correctly determined that the causes of action alleged in counts VII, VIII, IX, and X were barred by the limitation period expressly provided in this construction statute of repose.

¶ 51 **CONCLUSION**

¶ 52 For the foregoing reasons, we hold that the trial court properly dismissed counts III through VI based upon the public duty rule, and the trial court properly dismissed counts VII through X based upon the construction statute of repose.

¶ 53 Affirmed.