

SALINE TOWNSHIP, ILLINOIS,)
)
 Defendant-Appellee.) Honorable
 Dennis R. Ruth,
 Judge, presiding.

NO. 5-11-0423

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

MELANIE HEDLUND,)
)
 Plaintiff-Appellant,)
)
 v.) No. 10-L-178
)
)
 ALVIN P. STEINER,)
)
 Defendant,)
)
 and)
)
 SALINE TOWNSHIP, ILLINOIS,)
)
 Defendant-Appellee.) Honorable
 Dennis R. Ruth,
 Judge, presiding.

NO. 5-11-0424

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

JAMIE MIENER,)
)
 Plaintiff-Appellant,)
)
 v.) No. 10-L-145
)
)
 ALVIN P. STEINER,)
)
 Defendant,)

Defendant,)	
)	
and)	
)	
SALINE TOWNSHIP, ILLINOIS,)	Honorable
)	Dennis R. Ruth,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE SPOMER delivered the judgment of the court.
Justices Welch and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court was correct in dismissing the plaintiffs' claims against a township under the Premises Liability Act (740 ILCS 130/1 to 5 (West 2008)) because premises liability as applicable to local governmental units is defined more narrowly under section 3-102 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-102 (West 2008)) and the plaintiffs have failed to state a claim under that statute. The plaintiffs have failed to state a claim under the Gender Violence Act (740 ILCS 82/10 (West 2008)) because they failed to show that the township "personally encourag[ed] or assist[ed] the act or acts of gender-related violence." Finally, the plaintiffs have failed to state a claim under the Illinois Civil Rights Act of 2003 (740 ILCS 23/1, 5 (West 2008)) because they failed to allege actual knowledge of an official of the township with authority to take corrective action.

¶ 2 The plaintiffs, Elizabeth J. Watkins, Ailie Ritchie, Melanie Hedlund, Jamie Miener, Tara M. Reding, and Laura B. Barry, appeal from the orders of the circuit court of Madison County of January 13, 2011, which dismissed their claims against Saline Township (the Township) based on the Premises Liability Act (740 ILCS 130/1 to 5 (West 2008)). In addition, they appeal the order of April 21, 2011, which dismissed their claims against the Township based on the Gender Violence Act (740 ILCS 82/1 to 20 (West 2008)) and their claims based on the Illinois Civil Rights Act of 2003 (740 ILCS 23/1, 5 (West 2008)).¹ This

¹Violations of the Premises Liability Act (740 ILCS 130/1 to 5 (West 2008)) were alleged in count VII of Watkins' second amended complaint, count VII of Hedlund's second amended complaint, count VII of Miener's second amended complaint, and count VII of

court, on its own motion, consolidated the appeals for purposes of oral argument and disposition. For each appeal, this court will address whether the circuit court erred in dismissing the plaintiffs' claims. For the reasons below, we affirm.

¶ 3

FACTS

¶ 4 These cases arose from alleged sexual assaults and batteries which occurred at the Township offices when the plaintiffs were applying for general assistance. These attacks allegedly occurred during Alvin P. Steiner's tenure as township supervisor.² These six

Reding's first amended complaint. Violations of the Gender Violence Act (740 ILCS 82/10 (West 2008)) were alleged in count VIII of Watkins' second amended complaint, count VIII of Hedlund's second amended complaint, count VIII of Miener's second amended complaint, count VIII of Reding's first amended complaint, count II of Barry's second amended complaint, and count VII of Ritchie's first amended complaint. Violations of the Illinois Civil Rights Act of 2003 (740 ILCS 23/1, 5 (West 2008)) were alleged in count XI of Watkins' second amended complaint, count XI of Hedlund's second amended complaint, count XI of Miener's second amended complaint, count XI of Reding's first amended complaint, count V of Barry's second amended complaint, and count VIII of Ritchie's first amended complaint.

²Hedlund alleged Steiner's misconduct occurred during 2009 until his resignation. Ritchie alleged that Steiner's misconduct occurred from September 2007 until August 2008. Watkins alleged that Steiner's misconduct occurred from October 2006 until November 2009. Miener alleged that Steiner's misconduct occurred through November 2009. Reding alleged that Steiner's misconduct occurred from 2008 until his resignation. Barry alleged that Steiner's misconduct occurred during 2006 and she was dissuaded from reapplying for assistance during the summer of 2009 when she learned that she would again have to deal with Steiner. We further note that in the case of Barry, Steiner's alleged misconduct occurred

actions were brought originally against Steiner, who allegedly perpetrated the attacks, and the Township, Steiner's employer. As stated in most of the complaints,³ Steiner was the township supervisor and as such was in control of the day-to-day operations of the Township office. The complaints allege that the Township's hours of operation, its control of employee presence, and the arrangement of furniture in Steiner's office were all designed to facilitate Steiner's sexual predation. The complaints also allege that the Township failed to properly supervise Steiner and this contributed to his misconduct. According to the complaints, in addition to Steiner, agents or employees of the Township, Julie Powell and Don Shimer, knew about Steiner's alleged attacks.

¶ 5 According to the complaints, these facts constituted causes of action under the Premises Liability Act (740 ILCS 130/1 to 5 (West 2008)), the Gender Violence Act (740 ILCS 82/1 to 20 (West 2008)), and Illinois Civil Rights Act of 2003 (740 ILCS 23/1, 5 (West 2008)). The Township moved for dismissal of all counts against it for failure to state a cause of action pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)). On January 13, 2011, the circuit court dismissed, *inter alia*, all the plaintiffs' claims against the Township based on the Premises Liability Act (740 ILCS 130/1 to 5 (West 2008)). On April 21, 2011, the trial court dismissed, *inter alia*, all the plaintiffs' claims based on the Gender Violence Act (740 ILCS 82/1 to 20 (West 2008)) and the Illinois Civil Rights Act of 2003 (740 ILCS 23/1, 5 (West 2008)). On September 26, 2011, the plaintiffs filed a timely notice of appeal. Alvin Steiner settled all the claims against him and is not a party to this appeal.

¶ 6 ANALYSIS

¶ 7 The circuit court dismissed the causes of action pursuant to section 2-615 of the Illinois Civil Rights Act of 2003 before gender was added to the protected classes by the 2008 amendment (Pub. Act 95-541 (eff. Jan. 1, 2008)) of the Illinois Civil Rights Act of 2003. 740 ILCS 23/1, 5 (West 2006).

³This allegation is not present in Barry's complaint.

Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)) for failure to state a claim. "A section 2-615 motion attacks the legal sufficiency of a complaint by asserting that it fails to state a cause of action upon which relief can be granted." *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 147 (2002). "In determining whether a complaint states a cause of action, the allegations contained within the complaint are construed in the light most favorable to the plaintiff and all well-pleaded facts and reasonable inferences drawn from those facts are accepted as true." *Id.* However, "[t]hey do not admit conclusions of law or conclusions of fact unsupported by allegations of specific fact." *Lawson v. City of Chicago*, 278 Ill. App. 3d 628, 634 (1996). "The standard of review on appeal from an order granting a section 2-615 motion to dismiss is *de novo*." *Oliveira*, 201 Ill. 2d at 147-48. "[A] reviewing court may affirm the circuit court on any basis in the record." *People v. Johnson*, 208 Ill. 2d 118, 127 (2003).

¶ 8 The first issue on appeal is whether the plaintiffs stated a cause of action under the Premises Liability Act (740 ILCS 130/1 to 5 (West 2008)). The plaintiffs argue that the presence of Steiner committing sexual abuse on property which the Township owned constituted a breach of its duty to the plaintiffs under the Premises Liability Act "of reasonable care under the circumstances regarding the state of the premises *or acts done or omitted on them*." (Emphasis added.) 740 ILCS 130/2 (West 2008). We note that this statement of duty with respect to conditions on property is broader than that stated in section 3-102(a) of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/3-102(a) (West 2008)), which does not refer to "*acts done or omitted on*" the property but rather provides that a local governmental entity has a "duty to exercise ordinary care to maintain its property in a reasonably safe condition."

¶ 9 "When a general statutory provision and a more specific one relate to the same subject, we will presume that the legislature intended the more specific statute to govern."

Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 346 (2008). Here, both statutes address the duties a property owner has toward an individual. However, the Tort Immunity Act applies to local governmental units. 745 ILCS 10/3-102 (West 2008). By contrast, the Premises Liability Act applies to all property owners. 740 ILCS 130/2 (West 2008). Since the Township is a local governmental unit, we find that the Tort Immunity Act controls its duty with respect to property.

¶ 10 Having found the Township's duty with respect to its property is properly governed by section 3-102 of the Tort Immunity Act (745 ILCS 10/3-102 (West 2008)), we must determine if the plaintiffs have alleged facts that would constitute a breach of that duty. "[T]he Tort Immunity Act codifies the common law duty of a local governmental unit 'to exercise ordinary care to maintain its property in a reasonably safe condition.'" *Governmental Interinsurance Exchange v. Judge*, 221 Ill. 2d 195, 215 (2006). Here, we must determine whether, under section 3-102, the duty to maintain property extends to include a duty to protect against the acts of persons on the property.

¶ 11 "In interpreting a provision of the Tort Immunity Act, as with any statute, our primary goal is to ascertain and give effect to the intention of the legislature." *Ries v. City of Chicago*, 242 Ill. 2d 205, 215-16 (2011). "Rules of statutory construction require that words be given their ordinary meaning as derived from common usage, unless a different meaning is intended by the statutory scheme." *People v. Randle*, 183 Ill. App. 3d 146, 147 (1989). The word "maintain" is not defined by the Tort Immunity Act, and so it must be assigned its common usage. Black's Law Dictionary defines "maintain" as follows: "to care for (property) for purposes of operational productivity or appearance; to engage in general repair and upkeep." Black's Law Dictionary 1039 (9th ed. 2009). Another, more general, dictionary defines "maintain" as follows: "to keep in a state of repair, efficiency, or validity: to preserve from failure or decline." Webster's Third New International Dictionary 1362

(1981). Here, the plaintiffs allege that the presence of Alvin Steiner constituted an unsafe "condition" which the Township failed to "exercise ordinary care to maintain." However, we find that the plain meaning of section 3-102 of the Tort Immunity Act (745 ILCS 10/3-102 (West 2008)) cannot be construed in this manner. In contrast to section 2 of the Premises Liability Act (740 ILCS 130/2 (West 2008)), under section 3-102 of the Tort Immunity Act (745 ILCS 10/3-102 (West 2008)), the duty to maintain property refers solely to the physical condition of the property and not to "acts or omissions" of persons on the property.

¶ 12 Furthermore, the plaintiffs attempt to characterize the hours in which the Township office was closed, the arrangement of the furniture in Steiner's office, and the timing of employee breaks as unsafe conditions on the property that constituted a breach of the Township's duty. However, even if these could be characterized as "conditions" on the property, they were under the control of Steiner, who as stated in the complaints "was in charge of the day-to-day affairs of the office." For these reasons, the plaintiffs failed to state a claim against the Township for premises liability and the circuit court did not err in dismissing their claims.

¶ 13 Next, we turn to the question of whether the plaintiffs have stated a claim under section 10 of the Gender Violence Act (740 ILCS 82/10 (West 2008)). Section 5(2) of the Gender Violence Act defines gender-related violence as "physical intrusion[s] or physical invasion[s] of a sexual nature under coercive conditions satisfying the elements of battery under the laws of Illinois." 740 ILCS 82/5(2) (West 2008). Under the Illinois Criminal Code, "[a] person commits battery if he or she knowingly without legal justification by any means *** makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3 (West 2008). Here, the plaintiffs stated a claim against Steiner when they alleged that he touched the plaintiffs in an unwelcome sexual manner because they were

females. In order to state their claims against the Township, however, the plaintiffs must allege that the Township "personally encourag[ed] or assist[ed] the act or acts of gender-related violence." 740 ILCS 82/10 (West 2008). To this end, the plaintiffs have alleged that the Township has "personally encouraged or assisted" Steiner by closing the township office, arranging the furniture in Steiner's office to facilitate his acts, dismissing employees at different times during the day, not supervising Steiner, and providing Steiner with an office. In addition, the plaintiffs allege that two employees of the Township had knowledge of Steiner's acts. However, the arrangement of the furniture, establishment of office hours, and scheduling of the Township employees were, as stated in the complaint, all under the control of the township supervisor, Steiner himself. We find that these allegations do not rise to the level of personal encouragement or assistance on the part of the Township as required by section 10 of the Gender Violence Act (740 ILCS 82/10 (West 2008)). With regard to the allegation that the Township failed to supervise Steiner, we find that a failure to supervise is not tantamount to encouragement or assistance.

¶ 14 As for the allegation that agents or employees of the Township had knowledge of Steiner's acts, we note that the plaintiffs did not allege that these employees "personally encourag[ed] or assist[ed] the *** acts of gender-related violence" (740 ILCS 82/10 (West 2008)). Thus, the plaintiffs have failed to state a claim under the Gender Violence Act (740 ILCS 82/10 (West 2008)) against the Township, and the circuit court did not err in dismissing these claims.

¶ 15 Finally, we address whether the plaintiffs have stated a claim under the Illinois Civil Rights Act of 2003 (740 ILCS 23/1, 5 (West 2008)). In order to state a claim under this Act, the plaintiffs must allege that a unit of local government "den[ied] [them] the benefits *** or subject[ed] [them] to discrimination *** on the grounds of that person's race, color, national origin, or gender" or "utilize[d] criteria or methods of administration that [had] the

effect of subjecting [them] to discrimination because of their race, color, national origin, or gender." 740 ILCS 23/5(a) (West 2008). The statute does not state on its face whether a unit of local government would be subject to vicarious liability for the actions of employees. In order to make this determination, we will first look to the legislative history.

¶ 16 The Illinois Civil Rights Act of 2003 was created "in response to a Supreme Court decision which has limited the ability of individuals to bring disparate impact claims via Title VI of the Federal Code." 93d Ill. Gen. Assem., House Proceedings, April 3, 2003, at 146 (statements of Representative Fritchey). The Act was not intended "to break any new legal ground nor create any new rights. Rather, it creates a State right of action that has existed at the federal level for over thirty years." 93d Ill. Gen. Assem., Senate Proceedings, May 5, 2003, at 9 (statements of Senator Harmon). "There is no new exposure for the State, simply a new venue—State court rather than federal court." *Id.* at 10. The Act was amended in 2007 to add "gender" to the list of protected categories. Since the sponsors of the bill explicitly stated the bill did not include any new rights or law, the proper way to interpret the law is in the light of the decisions involving the borrowed federal law prior to its adoption by the Illinois legislature.

¶ 17 The Illinois Civil Rights Act of 2003 initially borrowed language from Title VI of the Civil Rights Act of 1964. Compare 42 U.S.C. § 2000d (2006) with 740 ILCS 23/5 (West 2008). Discrimination on the basis of gender is prohibited under federal law under Title IX of Educational Amendments of 1972 (20 U.S.C. § 1681 (2006)). Furthermore:

"Title IX was patterned after Title VI of the Civil Rights Act of 1964. Except for the substitution of the word 'sex' in Title IX to replace the words 'race, color, or national origin' in Title VI, the two statutes use identical language to describe the benefited class. *** The drafters of Title IX explicitly assumed that it would be interpreted and applied as Title VI had been *** *Cannon v. University of Chicago*,

441 U.S. 677, 694-95 (1979).

Thus, the gender provision of the Illinois Civil Rights Act of 2003 should be construed in the same manner as Title IX. The United States Supreme Court has held "that a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the [entity's] behalf has actual knowledge of discrimination *** and fails adequately to respond." *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 290 (1998).

¶ 18 Here, the plaintiffs alleged that two "employees or agents," Julie Powell and Don Shimer, had actual knowledge that Steiner had engaged in discriminatory conduct. However, it is not alleged that those "employees or agents" with actual knowledge had authority to respond, nor did the plaintiffs allege that those "employees or agents" had shared such knowledge with persons within the Township who had authority to respond. Thus, the plaintiffs have failed to state a claim under the Illinois Civil Rights Act of 2003, and the circuit court did not err in dismissing these claims.

¶ 19 We note that the defendant has also argued on appeal that two of the plaintiffs raised their claims outside of the relevant statute of limitations. Having found that all of the plaintiffs have failed to state a cause of action against the Township, we decline to address these issues.

¶ 20 **CONCLUSION**

¶ 21 For the foregoing reasons, the January 13, 2011, and April 21, 2011, orders of the circuit court of Madison County, which dismissed the plaintiffs' claims against the Township, are affirmed.

¶ 21 Affirmed.