

1-13-1186

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRANK LaROCCA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 L 065047
)	
COOK COUNTY, a Municipal Corporation and)	
TRIGGI CONSTRUCTION, INC.,)	Honorable
)	Thomas W. Murphy,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* In this automobile accident case, summary judgment in favor of both defendants is affirmed where the plaintiff failed to present any evidentiary basis sufficient to support an inference that defendants either caused an unsafe roadway condition during construction or had actual or constructive notice of an unsafe roadway condition.

¶ 2 **BACKGROUND**

¶ 3 On June 8, 2008, a vehicle driven by the plaintiff Frank LaRocca (LaRocca) was hit by a vehicle driven by John Baldovin (Baldovin) in Tinley Park, Illinois. On August 20, 2008, LaRocca filed a negligence action naming Baldovin as the sole defendant for Baldovin's failure

to yield to oncoming traffic. LaRocca sought to recover for injuries he sustained when the vehicle he was driving eastbound on 167th Street was hit on the rear driver's side by the vehicle driven by Baldovin westbound on 167th Street, as Baldovin attempted to make a left turn onto New England Street.

¶ 4 LaRocca amended his complaint four times throughout the case. On May 28, 2009, the defendant, Cook County, was added to the case in LaRocca's first amended complaint. Almost a year later, on May 14, 2010, the defendant, Triggs Construction, Inc. (Triggs), was added to the case in LaRocca's third amended complaint. LaRocca settled with Baldovin for \$250,000.00 and Baldovin was dismissed from the case on December 7, 2011. Other named defendants won various motions for summary judgment before the circuit court. On April 27, 2012, LaRocca filed a fourth amended complaint which contained allegations of negligence solely against the two remaining defendants, Cook County and Triggs, who are involved in this appeal.

¶ 5 Both Cook County and Triggs were added as defendants by LaRocca after Baldovin claimed he hit LaRocca because construction barriers obstructed his view of oncoming eastbound traffic when he was traveling westbound and attempting to make a left hand turn. Subsequently, Baldovin altered his theory and stated that rather than construction barriers obstructing his view, the reason the collision occurred was because a temporary left turn sign that was meant to direct westbound vehicles for a left turn onto New England Street was not pointed correctly, but was angled. Baldovin speculated that either strong winds or vandals moved the sign and that the shifted sign was positioned in such a manner that he had an insufficient view of it, which confused him as he made a left hand turn across the oncoming eastbound traffic onto New England Street. No other evidence was offered by either LaRocca or Baldovin concerning the temporary left turn sign.

¶ 6 At the time of the accident, Cook County had contracted with Triggs, a general

contractor, to carry out a project of highway repair and improvement along 167th Street. Triggs contracted with various subcontractors, including Work Zone Safety, Inc. (Work Zone Safety) Work Zone Safety was responsible for, among other things, placement of the temporary traffic control signage, including the temporary left turn signage for westbound traffic that wished to turn left onto New England Street. The contract between Triggs and Work Zone Safety required that all work be performed in accordance with the Illinois Department of Transportation Standards and the Manual on Uniform Traffic Control Devices. Triggs inaccurately stated in its statement of facts in its appellate brief that summary judgment was granted for both Triggs and Work Zone Safety on January 4, 2013. The record reflects that the circuit court granted Work Zone Safety's motion for summary judgment almost nine months earlier, on April 9, 2012. On that date, the circuit court found "as a matter of law that Defendant, Work Zone Safety owed no duty to fix an allegedly misplaced sign absent evidence of actual or constructive notice of the position of the sign." Additionally, the circuit court made it a final order when it found "that there is no just reason to delay enforcement or appeal pursuant to Illinois Supreme Court Rule 304(a)." LaRocca did not pursue an appeal of this ruling in favor of the subcontractor responsible for placement of the sign in question within the required 30 days from April 9, 2012. Ill. S. Ct. Rule 303(a) (eff. June 4, 2008).

¶ 7 The accident involving the LaRocca and Baldovin vehicles occurred on a Sunday, (June 8, 2008) and there were no active construction crews performing road repair work on that day. However, parts of 167th Street were in various stages of construction and repair. Construction barricades, barrels, horses and temporary signage were in place along 167th Street. Traffic was reduced to one lane in both westbound and eastbound lanes approaching the New England Street intersection.

¶ 8 The remaining two defendants, Triggs and Cook County, filed motions for summary

judgment pursuant to section 2-1005 of the Code of Civil Procedure. 735 ILCS 5/2-1005 (West 2012). Triggs argued that it had no duty to supervise or inspect the construction site and was never on notice of any improper traffic control signage where the accident occurred. Cook County argued that it never had actual or constructive notice that any unsafe condition existed in the area of the accident on 167th Street and, therefore, section 3-102 of the Tort Immunity Act protected it from liability. 745 ILCS 10/3-102 (West 2012). On January 4, 2013, the circuit court granted both Triggs's and Cook County's motions for summary judgment. LaRocca filed a motion for reconsideration of the court's order, and on March 8, 2013, the circuit court denied the motion. LaRocca filed a timely notice of appeal on April 4, 2013 pursuant to Supreme Court Rule 303 (a). Ill S. Ct. R. 303 (a) (eff. June 4, 2008).

¶ 9

ANALYSIS

¶ 10 On appeal, LaRocca argues that the circuit court improperly entered summary judgment in favor of Triggs and Cook County because he provided evidence through Baldovin's testimony that a misplaced left turn sign existed near the accident site which was enough to raise an issue of material fact and defeat summary judgment. Triggs argued it had no responsibility to inspect the placement of temporary traffic control signs. Both Triggs and Cook County argued LaRocca failed to establish a question of material fact, as he failed to show that either party had actual or constructive notice of the mispositioned sign or that Cook County's inspection system was inadequate under section 3-102(b) of the Tort Immunity Act. 745 ILCS 10/3-102(b) (West 2012).

¶ 11

a) Standard of Review

¶ 12 In this case, we are called upon to review whether it was proper for the circuit court to have granted summary judgment in favor of Cook County and Triggs. Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). The purpose of summary judgment is not to try a question of fact, but to determine if one exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). In appeals from summary judgment rulings, this court's standard of review is *de novo*. *Id.* at 43. Although summary judgment is encouraged as an expeditious means of disposing of a lawsuit, it is a drastic means and should be allowed only where the right of the moving party is clear and free from doubt. *Id.* In order to survive a motion for summary judgment, the nonmoving party must have produced admissible evidence establishing a genuine issue of material fact. *Lavazzi v. McDonald's Corp.*, 239 Ill. App. 3d 403, 408 (1992). Summary judgment is especially proper where the plaintiff cannot establish an essential element of his or her cause of action. *Id.*

¶ 13 Triggs and Cook County, as the movants, bore the initial burden of producing evidence to support the right to judgment in their favor. *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 601 (2009). Defendants may satisfy their burden in one of two ways: "(1) by affirmatively showing that some element of the cause of action must be resolved in his favor [citation], or (2) by establishing that there is an absence of evidence to support the nonmoving party's case." *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). The burden then shifts to "the plaintiff to present a factual basis which would arguably entitle him to judgment." *Id.* Plaintiff must present evidentiary facts to support the elements of the cause of action against each defendant moving for summary judgment or risk losing his case at this stage. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 885 (2009).

¶ 14 b) Discussion

¶ 15 LaRocca, in his negligence action, must prove the defendants owed him a duty of care, that defendants breached that duty, and that this breach was the proximate cause of his injury.

Krywin v. Chicago Transit Authority, 238 Ill. 2d 215, 236 (2010). Summary judgment is properly entered for the defendants where the plaintiff fails to establish any one of these elements. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001).

¶ 16 Triggs denied that it had any responsibility to inspect the positioning of temporary traffic control signage by the company hired to perform this task and presented the circuit court with the terms of the contract it had with Cook County to establish that it had no duty to inspect. Through its contract with Cook County, Triggs demonstrated that Cook County's resident engineer was responsible for supervising all subcontractors' work, including Work Zone Safety's positioning of temporary traffic control signage at the construction site. Triggs's general manager also stated that Cook County was responsible for supervising all subcontractors and Triggs was not responsible for supervising, inspecting or positioning any traffic control devices at the construction site. LaRocca was unable to rebut Triggs's evidence and establish any question of fact regarding Triggs's submission that it had no duty to inspect the work of the subcontractors, like Work Zone Safety who was responsible for positioning temporary traffic control signage during construction. LaRocca, therefore, failed to establish that Triggs owed him any duty of care in the inspection of the premises.

¶ 17 The only evidence of any alleged improper positioning of the left turn signage was the statement by defendant-driver, Baldovin, who stated the temporary left turn lane signage was not faced in the proper direction at the time of the accident. In fact, LaRocca himself stated that none of the signage or barricades present at the accident scene were confusing, misplaced or missing and he could offer no criticism of their placement. LaRocca presented no evidence that established the length of time the sign in question was angled, or that Triggs received a complaint about any improperly positioned signage. In other words, LaRocca offered no evidence that Triggs had actual or constructive notice of any mispositioned left turn sign at the intersection in

question. *Smolek v. K. W. Landscaping*, 266 Ill. App. 3d 226, 228-29 (1994). Therefore, the circuit court properly granted summary judgment in Triggi's favor.

¶ 18 The tort liability of a governmental body such as the defendant, Cook County, is governed by the Tort Immunity Act. *Burke v. Grillo*, 227 Ill. App. 3d 9, 18, (1992). Section 3-102 of the Tort Immunity Act codifies the duty of a public entity to maintain its property for the safety of intended users. *Vesey v. Chicago Housing Authority*, 145 Ill. 2d 404, 409 (1991).

¶ 19 Cook County raised the affirmative defense that it was immune from liability under section 3-102 of the Tort Immunity Act, 746 ILCS 10/3-102 (West 2012). Section 3-102 of the Tort Immunity Act provides as follows:

"(a). Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in a reasonably adequate time prior to an injury to have taken measures to remedy or protect against such a condition.

(b) A public entity does not have constructive notice of a condition of its property that is not reasonably safe within the meaning of Section 3-102(a) if it establishes either:

(1) The existence of the condition and its character of not being reasonably safe would not

have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making the public property or adjacent property; or

(2) The public entity maintained and operated such inspection system with due care and did not discover the condition." 745 ILCS 10/3-102 (West 2012).

¶ 20 Pursuant to the Tort Immunity Act, in order to be successful in his action against Cook County, LaRocca must have set out the existence of Cook County's actual or constructive notice of the alleged negligent positioning of the temporary left turn lane signage.

¶ 21 The filing of a motion for summary judgment does not change the assigned burdens of proof by the parties. The burden of proving either actual or constructive notice of an alleged dangerous condition rests with the plaintiff, LaRocca, who is asserting and must prove its existence as part of his case-in-chief. *Finley v. Mercer County*, 172 Ill. App. 3d 30 (1988). Therefore, when faced with defendants' properly supported motions for summary judgment on the issue of lack of notice, LaRocca was required to respond with either direct or circumstantial evidence from which a reasonable person could infer notice to Cook County and/or Triggi of the

potential hazard.

¶ 22 LaRocca provided no proof of actual notice, nor did he submit any evidence from which constructive notice could be inferred.

¶ 23 In order to establish constructive notice, LaRocca could have shown that the condition complained of had existed for such a length of time, or was so obvious that the responsible party, exercising reasonable care, might have known, but he did not. *Finley v. Mercer County*, 172 Ill. App. 3d 30 (1988); *Buford by Buford v. Chicago Housing Authority*, 131 Ill. App. 3d 235 (1985); *Repinski v. Jubilee Oil Co.*, 85 Ill. App. 3d 15 (1980). In other words, when dealing with constructive notice, a party is charged with knowledge they might have obtained through reasonable means and effort. *Moran v. Union Bank of Chicago*, 352 Ill. 503 (1933); see also *City of Chicago v. Central National Bank*, 134 Ill. App. 2d 22 (1985). The test is what a party could have known by the information within his reach if he used the vigilance that the law requires of him. *Stoke v. Wheeler*, 391 Ill. 429 (1945).

¶ 24 LaRocca could have attempted to demonstrate that Cook County failed to make proper inspections or did not make inspections frequently enough to discover the condition, but again, he failed to offer any such evidence of constructive notice. The longstanding general rule is that if a dangerous condition that caused the injury existed for a period of time, and Cook County could have taken measures to guard against it or correct it during that period of time and failed to do so, notice would be imputed to Cook County. *Finley v. Mercer County*, 172 Ill. App. 3d 30 (1988); *Mtengule v. City of Chicago*, 257 Ill. App. 3d 323 (1993); *Jones v. City of Rock Island*, 101 Ill. App. 2d 174 (1968); *Graham v. City of Chicago*, 346 Ill. 638 (1931).

¶ 25 There is no evidence in this case from which anyone could infer or suggest the length of time, prior to the June 8th accident, the left turn signal was improperly angled. See, e.g. *Mtengule v. City of Chicago*, 257 Ill. App. 3d 323 (1993). The record is silent as to any time frame for

how long the turned sign existed. Cook County's last inspection prior to the accident revealed that no signage were improperly positioned. Liability cannot be based on speculation or conjecture, but must rest upon admissible evidence. *Kociszak v. Kelly*, 2011 IL App. (1st) 102811, ¶ 24 (quoting *Smith v. Tri R Vending*, 249 Ill. App. 3d 654, 657 (1993)). Baldovin's speculation as to the cause of the condition, upon which LaRocca relies, does not address the length of time the condition was present, but only how it may have occurred. This type of speculation is insufficient to create an issue of constructive notice based on the length of time the condition may have existed. *Finley v. Mercer County*, 172 Ill. App. 3d 30 (1988). To prove constructive notice, the claimant must provide some evidence of the length of time that elapsed with the dangerous condition in place. *Zameer v. City of Chicago*, 2013 IL App (1st) 120198; *Mtengule v. City of Chicago*, 257 Ill. App. 3d 323 (1993). In the instant case, LaRocca had to present some evidence as to the length of time the sign was angled or not correctly positioned sufficient for a factfinder to determine that Cook County (or Triggi) knew or should have known of its angled existence. LaRocca failed to meet his burden on this issue by failing to show any period of time, whether a couple of days or a few hours, for the court to consider. *Jochens v. City of Chicago*, 6 Ill. App. 2d 144 (1955).

¶ 26 LaRocca argues that Baldovin's testimony as to the "erroneous placement of the sign" and the Cook County inspector's statement that the sign was positioned correctly sufficiently raises a question of fact to defeat summary judgment.

¶ 27 However, it was incumbent upon LaRocca to establish that an issue of fact existed as to whether defendants knew or should have known the hazardous condition that precipitated the accident, *i.e.*, the mispositioned sign, and failed to do anything about it. *Finely v. Mercer County*, 172 Ill. App. 3d 30 (1988). Absent of any proof of how long the alleged dangerous condition existed, LaRocca cannot satisfy this burden.

¶ 28

CONCLUSION

¶ 29 Based on the forgoing analysis, we conclude that the circuit court properly granted summary judgment in favor of Triggi and Cook County and denied reconsideration of that order.

¶ 30 Affirmed.