

FIFTH DIVISION  
January 22, 2016

No. 1-14-2222

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DEWAYNE McGEE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 L 9736
	)	
CITY OF CHICAGO, a municipal corporation,	)	Honorable
	)	Kathy M. Flanagan,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE REYES delivered the judgment of the court.  
Justices Gordon and Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Summary judgment was proper where plaintiff was not an intended and permitted user of the curb where he fell because he was not in a crosswalk or the immediate area surrounding the vehicle he had exited, and, therefore, the City of Chicago did not owe him a duty under section 3-102 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-102 (West 2010)).

¶ 2 Plaintiff Dewayne McGee (plaintiff) filed a negligence action against the City of Chicago (the City) to recover for injuries sustained when he fell on a missing portion of a curb. The City moved for summary judgment alleging, *inter alia*, that it did not owe plaintiff a duty pursuant to section 3-102 of the Local Governmental and Governmental Employees Tort Immunity Act (the

Act) (745 ILCS 10/3-102 (West 2010)), because he was not in a crosswalk when he was injured. The circuit court granted the motion finding, in pertinent part, that the City did not owe a duty to plaintiff because he was neither in a crosswalk nor the immediate area of the parked vehicle that he had exited when he fell.

¶ 3 On appeal, plaintiff contends that the circuit court erred in granting the City's motion for summary judgment because plaintiff was an intended and permitted user of the curb where he fell because it was in the immediate area of the legally parked automobile that he exited. He further contends that the City owed him a duty because it is foreseeable that a person would cross the street directly from a vehicle that he exited rather than walk up to a crosswalk. We affirm.

¶ 4 The facts of this case are not in dispute. On November 11, 2011, plaintiff fractured his tibia when he claimed that he fell after stepping into a missing portion of a curb. In his deposition, plaintiff stated that he and his friend Tiffany Washington drove, in Washington's automobile, to check on a friend who lived at 53rd and Emerald. Washington parked her vehicle on the east side of the street. Plaintiff exited the vehicle and walked "[s]traight across the street." Specifically, plaintiff testified:

"Q. You stepped out of the car, and where did you go next?

A. Straight across the street west."

Q. Were you in the crosswalk or middle of the street?

A. Middle of the street.

Q. Where were you crossing to?

A. To the middle of the block. The house I was going to check on was in the middle of the block."

Plaintiff testified that he did not walk to the crosswalk at the corner because the automobile was in the middle of the block. As he stepped between the vehicles on the other side of the street, he "stepped up on the curb and fell." Plaintiff fell and fractured his tibia.

¶ 5 Washington stated in her deposition that after she parked the vehicle in the middle of the block, plaintiff exited the automobile on the street-side, walked across the street and then fell. Plaintiff did not go to the corner to cross the street; rather, he crossed the street directly from the parked automobile. Plaintiff later indicated "exactly where he fell." This spot was in the middle of the block.

¶ 6 On March 17, 2014, the City filed a motion for summary judgment alleging as a matter of law that it did not owe plaintiff a duty because plaintiff was not in either a crosswalk or the immediate area around a legally parked vehicle when he fell, and therefore, he was not an intended and permitted user of the curb. The City relied, in pertinent part, on plaintiff's deposition in which he stated that he crossed in the middle of the street rather than in a crosswalk.

¶ 7 In his response to the City's motion, plaintiff claimed that he was an intended and permitted user of the curb where he fell because that area should be considered part of the immediate area surrounding a legally parked vehicle. Plaintiff argued the route he took was the most direct way out of the street to the "relative safety of the sidewalk." In support of his position, defendant relied upon the deposition of architect David Schroeder who has experience designing building projects in the city of Chicago, including the design and construction of

curbs. Specifically, Schroeder stated in his deposition that "it would be totally expected" that a person parking on a one-way street would cross the street "where they are parked" to the opposite side and use that curb. Therefore, plaintiff concluded that the area where he fell was in fact the "immediate area" surrounding a legally parked vehicle because it was safer for him to cross the street there, as opposed to walking down the block to the crosswalk.

¶ 8 In granting the City's motion for summary judgment, the circuit court found that plaintiff was not an intended user of the street at the time of his injury because plaintiff was neither in a crosswalk nor in the "immediate area" surrounding the legally parked automobile that he had exited. The court specifically rejected plaintiff's argument that it was foreseeable that he would cross midblock after exiting a vehicle, as foreseeability did not change the intended use of property.

¶ 9 Summary judgment is proper when the pleadings, depositions, and admissions on file, together with any affidavits, establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). We review the circuit court's grant of summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 10 To prevail in a negligence action, a plaintiff must plead and prove that the defendant owed him a duty, that the defendant breached that duty, and that an injury proximately resulted from that breach. *Deibert v. Bauer Brothers Construction Co.*, 141 Ill. 2d 430, 434 (1990). The existence of a duty depends upon "whether defendant and plaintiff stood in such a relationship to one another that the law imposed upon defendant an obligation of reasonable conduct for the benefit of plaintiff." *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 140 (1990). Here, the underlying

facts are not in dispute. The only issue is whether, under those facts, the City owed a duty to plaintiff. The existence of a duty is a question of law. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 13. "In the absence of a showing from which the court could infer the existence of a duty, no recovery by the plaintiff is possible as a matter of law and summary judgment in favor of the defendant is proper." *Vesey v. Chicago Housing Authority*, 145 Ill. 2d 404, 411 (1991).

¶ 11 The dispositive issue in this appeal is whether the City owed a duty to plaintiff pursuant to section 3-102 of the Act (745 ILCS 10/3-102 (West 2010)). Section 3-102(a) states that:

"[e]xcept 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." See 745 ILCS 10/3-102(a) (West 2010).

¶ 12 Our supreme court has concluded that section 3-102(a) of the Act "only imposes a duty of ordinary care on municipalities to maintain property for uses that are *both* permitted *and* intended." (Emphases in original.) *Vaughn v. City of West Frankfort*, 166 Ill. 2d 155, 160 (1995). Whether the particular use of property was permitted and intended is determined by examining the nature of the property itself. *Id.* at 162-63. A municipality owes no duty to a pedestrian who crosses a public street outside of a crosswalk. See *Harden v. City of Chicago*, 2013 IL App (1st) 120846, ¶ 20 (collecting cases).

¶ 13 Here, plaintiff admitted that he exited the automobile, crossed the street midblock and fell on the opposite curb. Because it was undisputed that plaintiff was not in a crosswalk when he

fell, the City did not own plaintiff a duty. See *Vaughn*, 166 Ill. 2d at 158 ("a municipality does not owe a duty of reasonable care to pedestrians who attempt to cross a street outside the crosswalks").

¶ 14 Although plaintiff admits that he was not in the crosswalk at the time of his fall, he contends that the City owed him a duty because he was in the immediate area surrounding the legally parked vehicle from which he exited. *Curatola v. Village of Niles*, 154 Ill. 2d 201 (1993).

¶ 15 Plaintiff is correct that a municipality has a duty to maintain the street immediately around a legally parked vehicle for people to enter and exit the vehicle. See *Curatola*, 154 Ill. 2d at 213, 215-16 (the plaintiff was an intended and permitted user of the street immediately surrounding his parked truck because he had to exit and enter the truck; this "narrow exception" covered "the permitted and intended use of the street immediately around a legally parked vehicle"). However, plaintiff did not fall in the immediate area around the vehicle that he exited; rather, he fell on the opposite side of the street. We reject plaintiff's argument that the immediate area around a legally parked vehicle extends to the curb on the opposite side of the street because it is foreseeable that people would cross directly from a vehicle rather than walk to the nearest crosswalk.

¶ 16 *Harden v. City of Chicago*, 2013 IL App (1st) 120846 is instructive. In that case, the plaintiff was injured crossing the street when her foot became caught in a large metal plate located " 'between the stop line and the two crosswalk lines.' " *Id.* ¶ 5. In her deposition, the plaintiff stated that at the time of her injury, it was snowing and there was a " 'dusting' " of snow on the street and sidewalk. *Id.* ¶ 4. A photograph in the record revealed that the metal plate that the plaintiff alleged caused her fall was not within the marked crosswalk. In granting the City's

motion for summary judgment, the circuit court concluded that because the metal plate which the plaintiff alleged caused her fall was not inside the crosswalk, the path she chose to cross the street " 'was not in the City's intended and permitted use of the street' under section 3-102." *Id.* ¶ 12.

¶ 17 On appeal, the reviewing court determined that the City did not owe the plaintiff a duty because she was injured while crossing the street outside of the marked crosswalk and, therefore, was not an intended user of that area of the street. *Id.* ¶ 37. The court rejected the plaintiff's argument that the City owed a duty to pedestrians who walked outside of a crosswalk during inclement weather because it was foreseeable that a person would walk outside the lines if they were covered by snow. The court concluded that "it may be foreseeable that pedestrians would cross the street outside of the crosswalk, [but] the supreme court has made it clear that foreseeability does not change the intended use" of an area of the street. *Id.* ¶ 30. The court reiterated that "it is the intent of the municipality that determines the intended use of the property." *Id.* ¶ 37. The court also noted there was no legal authority for the proposition that the duty to pedestrians changes when weather "renders the crosswalk invisible." *Id.* Therefore, because the plaintiff was injured outside of a marked crosswalk, the City did not owe her a duty of care. *Id.*

¶ 18 Similarly, here, although it might be foreseeable that a person would choose to cross the street midblock upon exiting a vehicle rather than proceed to a crosswalk, foreseeability does not change the intended use of an area of a street. *Id.* ¶ 30. It is the nature of the property where a plaintiff is injured that determines whether a duty is owed under section 3-102. See *Vaughn*, 166 Ill. 2d at 160, 162-63. Plaintiff was not in a crosswalk or the immediate area surrounding the

automobile he exited when he fell. See *Harden*, 2013 IL App (1st) 120846, ¶ 34 ("the legally intended path for pedestrians is the crosswalk [although the] *Curatola* exception imposes a duty to a municipality for parking lanes" that exception does not cover the entire street). Therefore, because plaintiff was not a permitted and intended user of the area of the street where he fell, the City did not owe plaintiff a duty pursuant to section 3-102 of the Act. See 745 ILCS 10/3-102(a) (West 2010).

¶ 19 Accordingly, absent a showing from which a court could have inferred the existence of a duty, no recovery by plaintiff is possible as a matter of law and the court properly granted summary judgment in favor of the City. See *Vesty*, 145 Ill. 2d at 411.

¶ 20 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.