2018 IL App (1st) 172458-U

SIXTH DIVISION
July 27, 2018

No. 1-17-2458

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CLAUDIA GUZMAN, Plaintiff-Appellant, v. CHICAGO PARK DISTRICT, a municipal corporation, and CITY OF CHICAGO, a municipal corporation, Defendants-Appellees (NATE WATERS, an individual, and COLLINS ENGINEERS, INC., an Illinois corporation, Defendants).	)	Appeal from the Circuit Court of Cook County No. 16 L 7718 Honorable John H. Ehrlich, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court properly dismissed plaintiff's premises liability claims against the Chicago Park District and City of Chicago. The design of the trail on which plaintiff was injured was a "condition" of public property used for recreational purposes within the scope of section 3-106 of the Tort Immunity Act.

¶ 2 On August 4, 2015, plaintiff Claudia Guzman was running on the Bloomingdale Trail (also known as the "606 Trail") in Chicago. Nate Waters, who was bicycling behind Guzman in

the same direction of travel, struck and injured her. In the first amended complaint at issue in this appeal, Guzman sued the City of Chicago; the Chicago Park District; Waters; and Collins Engineering, the lead private partner and project manager in the development of the trail. Counts I and III of the first amended complaint are premises liability claims against the Park District and City, respectively. Guzman alleged that the Park District, City, and others "formed a public/private partnership and purchased, owned, planned, created, constructed, built, managed, and maintained" the trail, which is "used by the general public for running, walking, and biking." She also alleged that the defendants were negligent because they designed and constructed the trail with paths, such as the one on which Guzman and Waters were travelling, that were too narrow for user safety, which created a dangerous and unsafe condition. In particular, Guzman complained that because the trail's narrow path design did not provide a passing lane for bicyclists, Waters collided with Guzman.

¶ 3 Counts II and IV are claims against the Park District and City of Chicago, respectively, for willful and wanton conduct. The remaining counts relate to the other defendants and are not relevant to this appeal.

¶ 4 The Park District filed a combined motion to dismiss both counts against it, pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code), 735 ILCS 5/2-619.1 (West 2016). In the section 2-619(a)(9) portion of the motion, the Park District argued that the premises liability claim in count I was barred by section 3-106 of the Illinois Tort Immunity Act, 745 ILCS 10/3-106 (West 2016) (Act). In the section 2-615 portion of the motion, the Park District alleged that Count II of the first amended complaint failed to state a cause of action for willful and wanton conduct. The court granted the City of Chicago leave to join in the Park District's

motion, which had the effect of adopting the Park District's motion to dismiss counts I and II as a motion to dismiss to the parallel counts against the City (counts III and IV) *mutatis mutandis.*

¶ 5 After briefing and argument, the circuit court granted the Park District's and City's motions to dismiss on September 11, 2017. The court entered a written order (1) dismissing Counts I, II, III, and IV with prejudice; (2) determining that there was no just cause to delay appeal of the dismissal of those counts pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)); and (3) noting that the case would continue as to defendants Waters and Collins Engineering. This appeal followed.

¶ 6 On appeal, Guzman contends that the circuit court erred in dismissing count I and III, her premises liability claims against the Park District and City. Although Guzman's notice of appeal indicates she appeals from the entirety of the September 11, 2017 order, her appellate brief raises no arguments regarding the dismissal of counts II and IV, which alleged willful and wanton conduct by the Park District and City. We therefore consider the appeal as to the dismissal of those counts forfeited. See *Lake County Grading Co., LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36.

¶ 7 Guzman does not dispute that the trail is "public property * * * used for recreational purposes", but she contends that the design of the trail, in particular the narrowness of its paths and lack of sufficient space for one user to pass another, is not a "condition" of the property within the meaning of section 3-106. She argues that the term "condition" refers to things that are actually on the trial itself, such as snow, and that her claim is about something entirely different—an inherently defective design.

¶ 8 The circuit court dismissed counts I and III pursuant to section 3-106 of the Act, which 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." 745 ILCS 10/3–106 (West 2016).

¶ 9 A section 2-619(a)(9) motion can be used to resolve whether the Tort Immunity Act bars a claim. *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 504 (2006). When ruling on a motion to dismiss under section 2-619, a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the non-moving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. As a result, a motion to dismiss should not be granted unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. We review a trial court's decision on section 2-619 motions to dismiss *de novo*. *Coghlan*, ¶ 24.

¶ 10 The issue presented is one of statutory interpretation—a question of law—which we also review *de novo*. *Moon v. Rhode*, 2016 IL 119572, ¶ 22. The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 552 (2009). "The statute should be evaluated as a whole, with each provision construed in connection with every other section." *Id.* If the statutory language at issue

is clear and unambiguous, a reviewing court must interpret the statute according to its terms without resorting to aids of statutory construction. *Branson v. Department of Revenue,* 168 Ill. 2d 247, 254 (1995).

¶ 11 Illinois courts have had frequent opportunities to consider whether section 3-106 barred a particular claim because the injury was caused by a "condition" of public recreational property. The leading Illinois Supreme Court cases on this issue are *McCuen v. Peoria Park Dist*., 163 Ill. 2d 125 (1994) and *Moore v. Chicago Park Dist*., 2012 IL 112788.

¶ 12 In the first case, *McCuen*, the court held that a driverless hayrack was not a condition of public property within the meaning of section 3-106. The court explained: "Plaintiffs do not claim that the hayrack itself was dangerous, defective or negligently maintained, only that the mule team was not handled properly by the park district employee. The handling of the mule team does not relate to the condition of the hayrack itself. If otherwise safe property is misused so that it is no longer safe, *but the property itself remains unchanged*, any danger presented by the property is due to the misuse of the property and not to the condition of the property." *Id.* at 129 (emphasis added).

¶ 13 In a case following *McCuen*, the appellate court explained this principle further: "The plain and ordinary meaning of the phrase 'liability is based on' is that the entity's duty must be derived from its control of the property, *e.g.*, maintenance *or construction* of the property. * * * Section 3-106 specifies that the 'liability' must be 'based on' the existence of a condition. The plain meaning of this phrase is that immunity is only granted if the theory of recovery which creates defendant's obligation is one of premises liability." *Manuel v. Red Hill Community Unit School District No. 10 Board of Education,* 324 Ill. App. 3d 279, 284-85 (2001) (emphasis added).

¶ 14 Other cases following *McCuen* illustrate that section 3-106 bars claims that are not based on activities conducted on recreational property but that are instead based on the property's manner of construction or design—inherent, passive characteristics rather than activities. See, *e.g.*, *Bubb v. Springfield School District 186*, 167 Ill. 2d 372 (1995) (barring claim that school playground sidewalk was built four inches higher than adjacent grassy area); *Dinnelli v. County of Lake*, 294 Ill. App. 3d 876, 878-89 (1998) (barring claim alleging negligent design and placement of midblock crosswalk on bicycle and pedestrian trail); *Koltes v. St. Charles Park District*, 293 Ill. App. 3d 171, 173 (1997) (barring claim that a golf tee box was designed to place spectators in a zone likely to be showered with errant golf balls); *Vilardo v. Barrington Comunity School District 220*, 406 Ill. App. 3d 713, 722 (2010) (barring claim that defendant negligently maintained a batting cage and net, allowed a hole to exist in the net, failed to inspect the net, and failed to warn of the dangerous condition in the net).

¶ 15 The supreme court revisited section 3-106 in *Moore*. There, the court cited *McCuen* with approval and reviewed the many appellate decisions that had followed it. The court held that an accumulation of snow and ice on recreational property was a "condition" of the property under section 3-106. The court explained: "We agree with other Illinois courts which have found that *McCuen* illustrates that section 3-106 immunizes a defendant from liability in negligence where the property itself is unsafe, but that section does not immunize the defendant from unsafe activities conducted upon otherwise safe property." *Moore*, 2012 IL 112788, ¶ 15. The court further stated: "there was no misuse of property that contributed to plaintiff's decedent's injury; rather, the condition of the property was simply changed due to the new condition of the snow and ice located thereon, such that section 3-106 immunity applies." *Id.*, ¶ 17. The *Moore* court concluded by stating that its decision was consistent with the Act's purpose to encourage the

development and maintenance of recreational facilities: "Thus, we find it to be in line with the public policy of this state to promote the expenditure of public funds for the purpose of creating greater access to recreational areas, rather than to divert those funds to pay damage claims stemming from the resulting condition of that property." *Id.* ¶ 22.

¶ 16 These authorities compel the conclusion that section 3-106 of the Act bars Guzman's claims. Although counts I and III are somewhat lengthy, their gist is that the Park District and City were negligent in creating a trail that had paths too narrow for bicyclists to safely pass runners or pedestrians safely. Like the sidewalk in *Bubb*, the crosswalk in *Dinelli*, the golf tee box in *Koltes*, and the batting cage net in *Vilardo*, the narrowness of the path is a "condition" of the trail within the meaning of section 3-106.

¶ 17 Guzman's arguments to the contrary are unconvincing. She contends that when the term "condition" in section 3-106 is read in harmony with the same term in section 3-102 of the Act, the result is that the defendants do not enjoy immunity for claims arising from the design of the trail. Section 3-102(a) provides that 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 * * *." 745 ILCS 10/3-102(a) (West 2016) (emphasis added). Guzman argues that the two sections, read together, only provide immunity when a public entity fails to *maintain* its property in a safe condition. Therefore, she concludes, there is no immunity for claims brought because of negligent design or construction of property. We disagree. First, Guzman's construction is impossible to reconcile with the *McCuen* case and its progeny, all of which have found that immunity does bar claims related to constructed characteristics of recreational property. Moreover, the supreme court in *Moore*

rejected a virtually identical argument. The *Moore* court noted that the dissenting justice in the lower court had "aptly" stated: "there is no provision in section 3-106 that makes a public entity subject to the due-care requirements of section 3-102. * * * The specific provisions of section 3-106 explicitly immunize public entities from all liability for injuries sustained on recreational property except in the case of willful and wanton conduct." *Moore*, ¶ 12, quoting *Moore v. Chicago Park District*, 2011 IL App (1st) 103325, ¶ 24 (Connors, J., dissenting).

¶ 18 Second, Guzman relies on a discussion in a more recent supreme court decision, *Corbett v. County of Lake*, 2017 IL 121536. The court reversed a summary judgment order in favor of a city on the basis that the Skokie Bike Path, due to its particular characteristics and usage, was not a "hiking, riding, fishing or hunting trail" under section 3-107(b) of the Act, 745 ILCS 10/3-107(b) (West 2016). The court noted: "it seems strange to say that a local public entity can build and maintain a bike trail, encourage people to use it, and represent that it is safe but then escape all liability for injuries caused by even the most egregious misconduct in failing to maintain it." *Id.* ¶ 36. Guzman argues that it would be absurd to allow a public entity to construct a facility without ensuring that it is safe for public use. But *Corbett* is inapposite because it involved an injury which occurred in a different type of public facility covered by a different section of the Act. It is undisputed that the Bloomingdale Trail is a "recreational facility" under section 3-106 of the Act. A public entity enjoys only limited immunity from claims arising on "intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities," because the entity is not immune for claims resulting from willful and wanton conduct. 745 ILCS 10/3-106 (West 2016). In contrast, section 3-107 gives immunity even from claims for willful and wanton conduct if the injury occurred on a "riding, fishing or hunting trail." 745 ILCS 10/3-107 (West 2016). The

Corbett court explained that the legislature reasonably intended to give greater protections against lawsuits arising on "primitive or rustic" trails, because those trails must be kept in a natural state to be fully enjoyed. *Corbett*, ¶ 37. *Corbett*, therefore, does not support reversal of the circuit court's dismissal of Guzman's claim.

¶ 19 For these reasons, we find that the circuit court properly dismissed counts I and III of the first amended complaint based on the immunities granted to the Park District and City under section 3-106 of the Tort Immunity Act, 745 ILCS 10/3-106 (West 2016).

¶ 20 Affirmed.