

2018 IL App (1st) 171066-U  
No. 1-17-1066  
September 24, 2018

FIRST DIVISION

**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 DISTRICT

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THOMAS DECKER,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellant,	)	
	)	No. 16 L 6087
v.	)	
	)	The Honorable
CITY OF CHICAGO, an Illinois Municipal	)	John P. Callahan, Jr.,
Corporation,	)	Judge Presiding.
	)	
Defendant-Appellee.	)	

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JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where a passenger files a complaint against a municipality for injuries sustained while exiting a legally stopped taxi onto a crumbling and eroding curb, and requests that the court expand the duty a municipality owes to pedestrians exiting legally parked vehicles to include pedestrians exiting legally stopped taxicabs, the court did not err when it declined to expand the duty because imposition of such a duty would be unduly expensive and burdensome to the municipality.

¶ 2 Plaintiff, Thomas Decker (Decker), filed a negligence complaint against defendant, the City of Chicago (City), for injuries he sustained when he attempted to exit a legally stopped

taxi onto a crumbling and eroding curb. The circuit court granted a motion to dismiss for the City, finding that the City did not owe Decker a duty because he was not a permitted and intended user of the curb. Decker filed this appeal and argues that because Illinois recognizes a duty for municipalities to maintain the area immediately around a legally parked vehicle, it should extend this duty to the area immediately around a legally stopped taxi.

¶ 3 We find section 3-102(a) of the Local Governmental and Governmental Employees Tort Immunity Act (Act) only imposes a duty on a municipality where the person injured is an intended and permitted user of the property controlled by the municipality. We also find that Illinois recognizes a duty for municipalities to maintain the area immediately around a legally parked vehicle because permitted curbside parking necessarily entails pedestrian use of the street immediately around the parked vehicle and thus the local entity must have intended that use. We further find that necessity alone is not the measure of whether such use is intended, and that courts must carefully consider the following relevant factors pertaining to the imposition of a duty: (1) foreseeability that the defendant's conduct will result in injury to another; (2) likelihood of injury; (3) the magnitude of guarding against it; and (4) the consequences of placing that burden upon the defendant. After careful consideration of these factors, we hold that that while it is entirely foreseeable and likely that such injuries will occur to pedestrians entering or exiting a legally stopped taxi, requiring municipalities to maintain areas immediately surrounding a legally stopped taxi would impose upon a municipality a duty to maintain areas immediately around all city streets in their entirety, which would be unduly expensive and burdensome. Furthermore, we hold that imposition of such a duty would effectively negate section 3–102(a) of the Act since the intended use by

the municipality would no longer be controlling as the duty would be defined by a cabdriver each time he discharges a passenger. Therefore, we hold that a municipality does not owe a duty to maintain the area immediately around a legally stopped taxi.

¶ 4 This court has jurisdiction pursuant to Illinois Supreme Court Rule 301. The circuit court entered judgment for the City on March 30, 2017. Decker filed his notice of appeal on April 26, 2017 which was timely under Illinois Supreme Court Rule 303(a)(1) because it was filed within 30 days of the circuit court's final judgment.

¶ 5 I. Background

¶ 6 A. Complaint

¶ 7 On July 18, 2016, Decker filed his negligence complaint and alleged that at around 4:30 p.m. on June 3, 2016, he attempted to exit a taxi once it stopped in the southbound curb lane of Michigan Avenue immediately north of Monroe Street in Chicago, Illinois. As he exited the taxi, he stepped upon a crumbling and eroding curb which caused him to trip and fall. Accordingly, Decker argued the City negligently failed to maintain the curb in a safe condition for pedestrians utilizing it to enter or exit taxis.

¶ 8 On January 6, 2017, the City demanded that Decker produce a bill of particulars of the condition which he claimed caused him his injury. On January 17, 2017, Decker produced the bill of particulars and attached two photographs which he alleged accurately depicted and portrayed the curb where he was caused to fall.

¶ 9

B. Motion to Dismiss

¶ 10

On February 1, 2017, the City filed a motion to dismiss Decker's complaint predicated on section 2-615 of the Code. 735 ILCS 5/2-615 (West 2016). The City argued that it did not owe Decker a duty to maintain the curb in a reasonably safe condition pursuant to section 3-102 of the Act because he was not an intended user of the curb. The Act provides that local public entities owe a duty to maintain their property only to permitted and intended users of such property. 745 ILCS 10/3-102(a) (West 2016). The City asserted that the photographs Decker provided showed that the curb on which he fell was located outside of a crosswalk and therefore, Decker was not an intended user of the curb. The City supported its contention by citing this court's decision in *Scarse v. City of Chicago*, 272 Ill. App. 3d 903 (1995) in which we held that a municipality owes no duty to a pedestrian exiting a taxicab mid-block, outside of a crosswalk, and is injured due to a defect in the roadway. Accordingly, the city argued that Decker, as a person injured by a defect in the roadway outside of a crosswalk, was not an intended user of the property that he complained caused his injury and therefore, the city owed him no duty.

¶ 11

On February 23, 2017, Decker filed a response to the City's motion to dismiss his complaint. Decker, citing *Curatola v. Village of Niles*, 154 Ill. 2d 201 (1993), contended the City owed him a duty because "Illinois recognizes a duty to maintain the street immediately around a legally parked vehicle, because 'legally permitted curbside parking necessarily entails pedestrian use of the street immediately around the parked vehicle.'" *Id.* at 213. Decker explained that the Chicago Municipal Code provides that "the driver of any taxicab shall not stop such a vehicle upon any business street at any place other than a taxicab stand,

except for the expeditious loading or unloading of passengers." Chi., Ill. Mun. Code § 9-48-060(a). Accordingly, Decker argued that because he was injured while attempting to exit a legally stopped taxi, the City owed him a duty just as it would if he was injured exiting a legally parked vehicle.

¶ 12 On March 15, 2017, the City filed a reply to Decker's response to the City's motion to dismiss. The City agreed that a municipality owes a duty to pedestrians who are injured in the area immediately surrounding a legally parked vehicle, but argued such duty should not be owed to pedestrians in the area immediately surrounding a legally stopped taxi. The City argued that the duty only extends to areas surrounding parked vehicles because these locations were designated by the City for parking and thus the City expects pedestrians to use the surrounding area of the parked vehicle. In contrast, the City contended that the duty should not extend to legally stopped taxis because taxis may legally stop anywhere, placing an unreasonable financial burden on the City to maintain conditions in all areas surrounding the legally stopped taxi.

¶ 13 On March 30, 2017, the circuit court granted the City's motion to dismiss, finding that Decker was not an intended user of the curb because the City's duty only extended to pedestrians in the area immediately surrounding a legally parked vehicle; not a legally stopped taxi.

¶ 14 On April 26, 2017, Decker filed his notice of appeal and requested the court reverse the circuit court's March 30, 2017 order granting the City's motion to dismiss.

¶ 15

## II. Analysis

¶ 16

### A. Standard of Review

¶ 17

Decker argues that the circuit court erred when it granted the City's section 2-615 motion to dismiss due to Decker's failure to plead sufficient facts in his complaint to state a cause of action in negligence. 735 ILCS 5/2–619 (West 2016). A section 2–615 motion to dismiss tests the legal sufficiency of the complaint and requires the allegations in the complaint, when construed in the light most favorable to the plaintiff, to be sufficient to establish a cause of action upon which relief may be granted. *Karas v. Strevell*, 227 Ill. 2d 440, 451 (2008). To state a cause of action in negligence, plaintiff must plead sufficient facts to establish that defendant owed plaintiff a duty of care, a breach of that duty, and an injury proximately caused by that breach. *Vaughn v. City of West Frankfort*, 166 Ill. 2d 155, 157–58 (1995). Whether defendant owed plaintiff a duty of care is a question of law subject to *de novo* review on appeal. *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 20.

¶ 18

### B. Local Governmental and Governmental Employees Tort Immunity Act

¶ 19

The scope of a municipality's duty to maintain its property is defined by section 3-102(a) of the Act. 745 ILCS 10/3-102(a) (West 2016); see also *Vaughn v. City of West Frankfort*, 166 Ill. 2d 155, 158 (1995). Section 3-102(a) provides, in pertinent part,

"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).

¶ 20 Section 3-102(a) only imposes duty on a municipality where the person injured is an intended and permitted user of the property controlled by the municipality. *Id.* at 160. Pursuant to the section 3-102(a) provision, a general rule has evolved in Illinois whereby a municipality does not owe a duty to a pedestrian who walks in or crosses a public roadway outside a crosswalk. *Curatola*, 154 Ill. 2d at 208. The principle behind this general rule is that streets are intended for vehicular use, not pedestrians. *Id.* at 210.

¶ 21 C. Exceptions

¶ 22 In *Curatola*, our Supreme Court first recognized an exception to the general rule. *Id.* at 213. There, plaintiff, a commercial truck driver, sought to recover damages for injuries he sustained while unloading his legally parked truck. *Id.* at 215. Plaintiff was stepping down from the rear of his truck onto the street when he twisted his foot on the edge of a pothole in the street and fell. *Id.* at 204. Defendant conceded that because plaintiff's vehicle was legally parked, plaintiff was a permitted user of the street under section 3-102. *Id.* at 206. Defendant however argued that plaintiff was not an intended user because he used the street as a commercial loading dock which was not the street's intended use. *Id.* at 206-207. Defendant in the case at bar, the City, filed an amicus brief in *Curatola* and argued against recognition of such an exception, contending that maintenance of areas immediately around parked cars would be enormously burdensome to the City. *Id.* at 207. The City further argued against such an exception because the scope of the duty would be large and ill-defined. *Id.* The court looked to an appellate court decision, *Di Domenico v. Village of Romeoville*, 171 Ill. App. 3d

293, 295 (1988), a case that originally recognized an exception to the general rule for injuries occurring in the area immediately around a legally parked vehicle. *Id.* at 210. The *Di Domenico* court recognized the exception by reasoning that “[i]t defies common sense to conclude that such local entities did not contemplate and intend that the operator of the vehicle along with passengers would use the street area around the parked vehicle for ingress and egress to and from their vehicle.” *Id.* The court adopted the *Di Domenico* court's holding, noting that the *Di Domenico* court's reasoning was proper because permitted curbside parking necessarily entails pedestrian use of the street immediately around the parked vehicle and thus the local entity must have intended that use. *Id.* However, the court made it clear that “the narrow exception we recognize here concerns only the permitted and intended use of the street immediately around a legally parked vehicle by its exiting and entering operators and occupants.” *Id.* at 213.

¶ 23 The court cautioned that in adopting the exception, it “[does] not hold that every pedestrian use of the street which is necessary to a permitted use of the street is itself both permitted and intended. Nor [does it] hold that necessity alone is the measure of whether such use is intended.” *Id.* The court further noted the exception is not large and ill-defined because the “duty to maintain the street area immediately around legally parked vehicles for those exiting and entering them will be bounded by the parameters of parking lanes” which it noted was similar to a local governmental entity's duty to maintain crosswalks for pedestrians. *Id.* at 214.

¶ 24 In recognizing the exception, the court explained it did not consider lightly the burden such a duty would have on municipalities. *Id.* Accordingly, the court carefully considered the

"relevant factors pertaining to the imposition of a duty: (1) foreseeability that the defendant's conduct will result in injury to another; (2) likelihood of injury; (3) the magnitude of guarding against it; and (4) the consequences of placing that burden upon the defendant." *Id.* The court found it is entirely foreseeable as well as likely that such injuries will occur. *Id.* The court also found that because "municipalities are at present charged with the duty to maintain parking lanes for vehicles, [the court] fail[ed] to appreciate that costs to maintain those areas for the operators and occupants getting into and out of those same vehicles [were] prohibitive of any duty to those persons." *Id.* at 214-215. Finally, the court found that "regardless of the burden, the entire community ultimately bears the risk" and therefore, "the risk under these circumstances is best spread among all members of the community by imposing such duty upon local entities." *Id.* at 215.

¶ 25 In *Vaughn*, the Supreme Court refused to recognize an additional exception where plaintiff suffered injuries on the street, outside of a crosswalk, even though the plaintiff's presence on the street was permitted by a Municipal Code. *Vaughn*, 166 Ill. 2d at 157. Plaintiff was walking on the sidewalk of a street that ended midblock. *Id.* Plaintiff then stepped into the street and began to cross to reach the sidewalk on the other side of the street when the plaintiff fell and sustained injuries. *Id.* Plaintiff cited a section of the Illinois Vehicle Code which provided, in pertinent part, "[w]here a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway." *Id.* at 160. Plaintiff also cited the defendant city's municipal code which she argued "only require[d] pedestrians to cross a roadway within a crosswalk when they are in a business district or when there are traffic signals in operation."

*Id.* Based on these statutory provisions, plaintiff contended that the sections did not prohibit the use of the streets by pedestrians and therefore argued that she was a permitted and an intended user of the streets outside a crosswalk. *Id.* Plaintiff further argued that because the sidewalk ended midblock, it was necessary for her to cross the street midblock to reach the sidewalk on the other side of the street. *Id.* at 161.

¶ 26 The court refused to recognize this exception, and explained that even if it were to accept plaintiff's argument that he was permitted to cross the street mid-block, "simply because 'pedestrians may be permitted to cross the street mid-block does not mean they should have unfettered access to cross the street at whatever time and under whatever circumstances they should so choose.'" *Id.* at 160. Citing *Curatola*, the court further refused to recognize the exception based on plaintiff's argument that she was an intended user of the street because it was necessary for her to cross the street midblock, noting that "[w]hether a use is intended by a local government entity is not determined solely on the necessity of such use." *Id.* at 162. Instead, the court found the costs of guarding against the injury were so prohibitive that they precluded an imposition of such a duty on the municipality in the case. *Id.* at 164. The court noted that "the costs of making all public streets and roadways reasonably safe for unrestricted pedestrian use would be an extreme burden on municipalities with limited resources." *Id.* at 164. The court went on to say "the burden of maintaining limited areas for pedestrian traffic is not an undue or harsh burden" but "imposing such a burden with regard to streets and roadways in their entirety would be unduly expensive and burdensome." *Id.*

¶ 27 In *Scarse*, this court, citing similar concerns to those outlined in *Vaughn*, declined to expand the definition of "intended and permitted use" of city streets to apply to people who

are discharged from taxis onto the street midblock, outside of a crosswalk. *Scarse*, 272 Ill. App. 3d at 903. In *Scarse*, plaintiff sustained injuries when she fell on the street as she exited a taxi that was double parked in the middle of the street. *Id.* at 904. As with Decker, plaintiff cited the City of Chicago Municipal Code which provides for the expeditious loading or unloading of passengers on city streets, and argued that since the ordinance does not require taxis to discharge passengers at a curb, the City must have intended that drivers use their discretion about where to discharge passengers and therefore, the plaintiff was an intended and permitted user of that part of the street where the taxi stops. *Id.* at 905.

¶ 28 Citing relevant factors pertaining to the imposition of a duty outlined in *Curatola* -- foreseeability of the injury; the likelihood of injury; the magnitude of the burden of guarding against the injury; and the consequences of placing that burden upon the defendant – we found that "accepting plaintiff's position would allow the cabdriver to define the City's duty each time he discharges a passenger" and "boundaries would depend on where the driver decides to stop" and as a result, "the exception would swallow the rule." *Id.* at 905. We further noted that "were we to measure the duty of care by the intent of individuals traveling over these various properties, we would effectively negate section 3–102(a) of the [Act], for no longer would the intended use by the municipality be controlling." *Id.* at 906. Instead, the intent of any particular individual would determine whether the municipality owed a duty of care. In conclusion, we refused to recognize this additional exception, because "a cabdriver, at the end of his trip, cannot create a municipal duty of care where none exists." *Id.* at 906.

¶ 29 In the case at bar, Decker contends we should recognize an additional exception to the general rule for injuries that occur in the area immediately around a legally stopped taxi, and

find that he was an intended and permitted user of the curb that caused his injuries. Decker argues that because the Chicago Municipal Code permits "expeditious loading and unloading of passengers" on city streets, the city therefore intends for passengers to utilize the area immediately around the legally stopped taxi to enter and exit the taxi. Decker cites *Curatola* to support his argument that he was a permitted and intended user of the area immediately around that legally stopped taxi because legally stopped taxis have the same concerns of necessity outlined in *Curatola*, as legally parked vehicles. Decker maintains it is illogical for the city to argue that he was not an intended user of the street immediately around the legally stopped taxi when it is necessary for him to use the area to enter and exit the taxi.

¶ 30 The City argues that extending the duty owed to pedestrians exiting legally parked vehicles to those exiting stopped taxicabs would be burdensome to the City. The City maintains that because taxis can stop nearly anywhere, extending the duty would swallow the general rule. We agree.

¶ 31 We find pursuant to section 3-102(a) of the Act, a duty would only be imposed on the City if Decker, as the injured pedestrian, was an intended and permitted user of the curb which caused his injuries. 745 ILCS 10/3-102(a) (West 2016); *Curatola* 154 Ill. 2d at 208. We also find that because Decker sustained his injuries when he was exiting a taxi cab that was legally permitted to stop by the curb pursuant to the City Municipal Code which provides for the expeditious loading or unloading of passengers on city streets, he was a permitted user of the curb. *Vaughn*, 166 Ill. 2d at 160. We further find as outlined in *Curatola*, Decker's use of the area immediately around the taxi cab was necessary. *Curatola* 154 Ill. 2d at 210. However, not every pedestrian use of the street which is necessary to a

permitted use of the street is itself both permitted and intended because necessity alone is not the measure of whether such use is intended. *Curatola* 154 Ill. 2d at 213; *Vaughn*, 166 Ill. 2d at 162. Accordingly, we must carefully consider the relevant factors pertaining to the imposition of a duty for injuries to pedestrians occurring in the area immediately around a legally stopped taxi: “(1) foreseeability that the defendant's conduct will result in injury to another; (2) likelihood of injury; (3) the magnitude of guarding against it; and (4) the consequences of placing that burden upon the defendant.” *Curatola* 154 Ill. 2d at 214.

¶ 32 Similar to our Supreme Court's finding in *Curatola* regarding injuries occurring in the area immediately around a legally parked vehicle, we also find that it is entirely foreseeable and likely that such injuries will occur to pedestrians entering or exiting a legally stopped taxi. *Id.* However, we find the magnitude of guarding against injuries occurring in the areas immediately around legally stopped taxis and the consequences of placing a duty on municipalities to guard against said injuries is significantly different in comparison to injuries occurring in areas immediately around legally parked vehicles. As Decker argues, the Municipal Code permits taxis to expeditiously load and unload passengers on any street. Chi., Ill. Mun. Code § 9-48-060(a). Consequently, a duty to maintain areas immediately surrounding a stopped taxi would impose upon the city a duty to maintain areas immediately around all city streets in their entirety. Such an imposition has been rejected by our Supreme Court in *Vaughn* due to its prohibitive costs. *Vaughn*, 166 Ill. 2d at 164. Furthermore, the Supreme Court in *Vaughn* noted that it imposed a duty on municipalities for injuries occurring in areas immediately around parked cars in *Curatola*, in part, because these areas are limited and as such, the burden of maintaining such limited areas is not undue or harsh.

*Id.* However, the court found that such an imposition with regard to streets in their entirety is unduly expensive and burdensome. *Id.* Furthermore, just as we did in *Scarse*, we find that if we were to impose this duty on the City, it would be defined by a cabdriver each time he discharges a passenger, effectively negating section 3–102(a) of the Act since the intended use by the municipality would no longer be controlling. *Scarse*, 272 Ill. App. 3d at 906.

¶ 33

### CONCLUSION

¶ 34

Accordingly, for similar reasons to those outlined in *Vaughn* and *Scarse*, we refuse to impose a duty on the City to maintain areas immediately around legally stopped taxis. Therefore, we hold that the circuit court did not err when it found that municipalities owe no duty to maintain streets immediately around a legally stopped taxi for pedestrians entering or exiting the taxi and when it granted the City its 2-615 motion to dismiss.

¶ 35

Affirmed.