SECOND DIVISION
December 8, 2015

No. 1-14-0766



| | | |
|---|---|---|
| MATTHEW HORVATH, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Cook County |
| | ) | |
| v. | ) | No. 10 L 5422 |
| | ) | |
| CITY OF CHICAGO, | ) | Honorable |
| | ) | Donald J. Suriano, |
| Defendant-Appellee. | ) | Judge Presiding. |

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concur in the judgment.

**ORDER**

¶ 1 *Held*: Defendant's answer to plaintiff's interrogatory was not a deliberate, clear, unequivocal admission that it owned the sidewalk where plaintiff fell and plaintiff did not reasonably rely on said answer. The trial court properly denied plaintiff's motion for a new trial.

¶ 2 On July 30, 2009, plaintiff Matthew Horvath tripped and fell on a sidewalk near Union Station and sustained injuries. Plaintiff filed a complaint against the City of Chicago (the City), as well as two private companies, Equity Office Management, L.L.C. (EOM) and EOP Operating Limited Partnership (EOP), alleging, in the alternative, that each named defendant owned and

controlled the sidewalk in question and that each defendant negligently maintained the sidewalk proximately causing his damages. Prior to trial, plaintiff moved to deem the City's answer to an interrogatory requesting the name of the owner of the sidewalk as a judicial admission that the City owned the sidewalk in question. The trial court denied that motion finding the City's answer did not constitute a judicial admission of ownership and allowed the City to deny ownership of the sidewalk at trial. A jury found in favor of the City, finding the City did not own the sidewalk. Plaintiff filed a motion for a new trial arguing the trial court erred in denying his pretrial motion to deem the City's answer a judicial admission of ownership and denying his motion to estop the City from denying ownership at trial. Plaintiff contended that had the trial court granted his pretrial motion, the jury would have entered a verdict in his favor. The trial court denied plaintiff's posttrial motion and this timely appeal followed. For the following reasons, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 On May 7, 2010, plaintiff filed this action against the City, EOM, and EOP alleging, in the alternative, that each defendant "owned, maintained, possessed, managed, controlled and inspected" the sidewalk approximately 19 feet west of CTA bus stop number 5006 on the north side of Madison Street, between Canal Street and the Madison Street Bridge. Plaintiff alleged that due to the defendants' negligent maintenance of the sidewalk, it was in a dangerous condition and caused plaintiff to fall and suffer injury. These injuries included a number of bruises, contusions, lacerations, and fractures, as well as a "severe shock to his nervous system."

¶ 5 In their separate answers, each defendant denied owning the sidewalk. Prior to filing its answer, the City sought information about the specific location of the accident. Plaintiff

responded with the location and also sent all defendants a series of interrogatories pursuant to Supreme Court Rule 213(f) (eff. Jan. 1, 2007), including Interrogatory No. 2 which asked:

> "[w]hat is the name, last known address and last known telephone number of the person or legal entity who owned the sidewalk [where plaintiff fell]?"

¶ 6 On August 10, 2010, the City verified its answer to Interrogatory No. 2 with the affidavit of a civil engineer, stating:

> "[t]he City of Chicago holds the public right-of-way at or near the area in question in trust for the benefit of the public. Upon information and belief, the owner(s) of the adjacent building may have a duty to maintain the sidewalk if it is vaulted or decorative."

¶ 7 On October 20, 2010, the City answered the complaint and denied allegations that it owned the sidewalk, that it had a duty to maintain the sidewalk and that plaintiff was injured as a proximate cause of any duty alleged against it. Plaintiff continued discovery with EOM and EOP requesting admissions that either entity owned the sidewalk, which was denied by each party on November 4, 2010. Thus, by November 4, 2010, each named defendant denied ownership of the sidewalk in its answer, EOM and EOP denied ownership through a denial of a request to admit, and the City, arguably, in its answer to Interrogatory No. 2.

¶ 8 In September 2011, plaintiff requested and was granted leave to voluntarily dismiss his claims against EOM and EOP.

¶ 9 On December 14, 2011, the City moved for summary judgment arguing it did not own or maintain the sidewalk and thus owed plaintiff no duty. In support of the motion, the City attached an ordinance (Union Station Company municipal ordinance (Chicago City Council,

Journal of Proceedings, March 23, 1914, at 4536-4562)) establishing that Union Station owned the sidewalk, and an affidavit by Jay Orlando, an engineer technician with the City's department of transportation. Mr. Orlando attested that he was familiar with the location where plaintiff fell and that Union Station owned and maintained the sidewalk at that location. After hearing, the trial court denied the City's motion for summary judgment.

¶ 10 Shortly before trial in October 2013, plaintiff moved to deem the City's answer to Interrogatory No. 2 a judicial admission of ownership of the sidewalk. Plaintiff argued the City's answer was a "clear, succinct statement" admitting ownership. Plaintiff also requested a ruling to estop the City from denying ownership of the sidewalk at trial because plaintiff was prejudiced by the City's delay in informing plaintiff of the ordinance until after the two-year statute of limitations had expired on any claim he could have brought against Union Station.

¶ 11 The trial court rejected plaintiff's arguments finding that the City's interrogatory answer was not a clear, unequivocal answer and that its answer may have suggested someone else, other than the City, may own the sidewalk. Further, after receiving the City's answer to Interrogatory No. 2, plaintiff requested EOM and EOP to admit ownership of the sidewalk, which further suggested plaintiff knew the City's answer was not an admission of ownership. The trial court also noted that "[t]he City has no obligation to tell you who owns property [it] do[es]n't own," the City never "deceived *** or misled you," the City denied ownership in its answer with the court concluding that the issue of ownership was best left to the jury to decide.

¶ 12 On October 24, 2013, a jury returned a general verdict in favor of the City and against plaintiff. The jury also answered a special interrogatory finding the City did not own the sidewalk. Plaintiff subsequently filed a posttrial motion for a new trial and requested a finding

that in the event a new trial is granted, the court should (1) deem the City's interrogatory answer a judicial admission and (2) equitably estop the City from denying ownership of the sidewalk. The trial court denied this motion and this timely filed appeal followed.

¶ 13 ANALYSIS

¶ 14 The basis of plaintiff's appeal is that he is entitled to a new trial because he was prejudiced by the erroneous ruling that the City's answer to Interrogatory No. 2 was not a judicial admission that it owned the sidewalk and, because of this error, the City should have been barred from denying ownership at trial and the jury should have been instructed that the City owned the sidewalk where plaintiff fell.

¶ 15 Plaintiff first argues the trial court erred by denying plaintiff's motion to deem the City's answer to Interrogatory No. 2 a judicial admission that it owned the sidewalk in question. Plaintiff does not contest the City's position that ownership of the sidewalk lies with Union Station as evidenced by the 1914 ordinance.

¶ 16 A judicial admission is a "deliberate, clear, unequivocal statement of a party about a concrete fact within that party's peculiar knowledge." (Internal quotation marks omitted.) *Vans Material Co., Inc. v. Department of Revenue*, 131 Ill. 2d 196, 212 (1989). Judicial admissions effectively remove a fact from dispute and dispense with the need to prove that fact. *Carlson v. Fish*, 2015 IL App (1st) 140526, ¶ 31. At trial, judicial admissions cannot be controverted or explained. *Id.* When deciding whether a party's statement constitutes a judicial admission, courts must interpret the statement in question consistently with that statement's context. *Dremco, Inc. v. Hartz Construction Co.*, 261 Ill. App. 3d 531, 536 (1994). The judicial admission doctrine requires thoughtful consideration so that a case does not turn on a nervous party's chance

statement. *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009) (quoting *Thomas v. Northington*, 134 Ill. App. 3d 141, 147 (1985). Judicial admissions include admissions in pleadings, open court, answers to interrogatories, stipulations and requests to admit. *Dremco*, 261 Ill. App. 3d at 536; *Brummet v. Farel*, 217 Ill. App. 3d 264, 267 (1991).

¶ 17 Although not discussed by the parties, we must first address the appropriate standard of review of the trial court's decision finding that the City's interrogatory answer did not constitute a judicial admission. As this court recently noted, we have used both the *de novo* standard and the abuse of discretion standard in reviewing whether a statement constitutes a judicial admission. *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶¶ 46-48; *North Shore Community Bank & Trust Co. v. Sheffield Wellington LLC*, 2014 IL App (1st) 123784, ¶ 117. Under the abuse of discretion standard, we only overturn a trial court's decision when no reasonable person would adopt the trial court's view. *Trettenero v. Police Pension Fund of City of Aurora*, 333 Ill. App. 3d 792, 801 (2002). Under *de novo* review, we analyze the issues of law " 'anew-the same as if the case had not been heard before' " and give no deference to the judge's conclusions or reasoning. *Hassebrock v. Ceja Corp.*, 2015 IL App (5th) 140037, ¶ 79. However, "both the cases advocating for *de novo* review and the cases applying the abuse of discretion standard of review agree on the same basic framework to be applied in determining whether a statement is deemed a judicial admission. Thus, a case applying the abuse of discretion standard still requires the statement to be clear, unequivocal, and uniquely within the party's personal knowledge [citation], and a case applying *de novo* review also looks at the context of the statement." *North Shore Community Bank and Trust Co.*, 2014 IL App (1st) 123784, ¶ 119. We find that in this case, regardless of the standard of review utilized, our inquiry and conclusion

would remain the same.

¶ 18 Here, the alleged judicial admission made by the City is that it "holds the public right-of-way at or near the area in question in trust for the benefit of the public. Upon information and belief, the owner(s) of the adjacent building may have a duty to maintain the sidewalk if it is vaulted or decorative." This is not a clear, unequivocal admission of ownership of the sidewalk where plaintiff fell. No statement of ownership is made. The City only references "holding" the "right-of-way" without unequivocally claiming ownership. It avoids claiming ownership with the deflection that "owner(s) of the adjacent building may have a duty to maintain the sidewalk." The possibility that others may have a duty to maintain an area does not constitute a clear statement of ownership of the area. On its face, the City's interrogatory answer does not admit to owning the sidewalk. At best, it expresses uncertainty as to ownership and, at worst, it is evasive. In either case, it informs plaintiff that, at the very least, a more certain and definite response should be compelled from the City or that a third party may own and have a duty to maintain the sidewalk, thus failing to satisfy the "deliberate, clear, unequivocal" requirements of a judicial admission. Moreover, given that the City specifically denied ownership of the sidewalk in its answer and later provided plaintiff and the trial court with a publicly available ordinance showing Union Station owned the property, plaintiff cannot persuasively argue that the answer to Interrogatory No. 2 clearly and unequivocally showed ownership in the City. Generally, matters of public record serve as constructive notice. *Ropiy v. Hernandez,* 363 Ill. App. 3d 47, 54-55 (2005).

¶ 19 Plaintiff contends *Wilmot v. City of Chicago,* 328 Ill. 552 (1927), is authority for the argument that the City's answer to Interrogatory No. 2 was an admission of ownership of the

sidewalk. Plaintiff does not specifically quote from *Wilmot* in support of his point, however, we assume the statement "[t]he *fee* of the streets and alley is vested in the local municipality in trust for all the citizens of the state and not merely for local use, and the Legislature has supreme control over them unless restrained by constitutional limitation" is the language he relies upon. (Emphasis added). *Id.* at 558 (citing *Heppes Co. v. City of Chicago*, 260 Ill. 506 (1913); *People ex. rel. Franchere v. City of Chicago*, 321 Ill. 466 (1926)). We do not find this helpful because the issue in *Wilmot* was whether the City could lawfully impose restrictions on an adjoining landowner's attempt to grade city sidewalks without complying with the city ordinance. The question here is whether the City admitted ownership of the sidewalk where, in its interrogatory answer, it stated it "holds the right-of-way" for the public good. We have not been provided with any authority that equates "holding the right-of-way" with a declaration of fee ownership. A point raised on appeal that is unsupported by citation to relevant authority is waived and will not be considered. *Alvarez v. Pappas*, 374 Ill. App. 3d 39, 44 (2007); *Wolfe v. Menard Inc.*, 364 Ill. App. 3d 338, 348 (2006).

¶ 20 In the context of the litigation at the time the City's interrogatory answer was filed, it is apparent that plaintiff was presented with an answer that was not "deliberate, clear or unequivocal" concerning ownership such that plaintiff then sent requests to admit ownership to the other two defendants, EOM and EOP. We recognize that this may have been an attempt to establish ownership in either EOM or EOP, or it may have been an attempt to establish joint ownership among two or more defendants, including the City. However, the request to admit sent to the non-City defendants weighs strongly in favor of a conclusion that plaintiff was aware that ownership was not clearly established through the City's answer to Interrogatory No. 2.

Shortly thereafter, the City filed its answer and "clearly and unequivocally" denied ownership and any duty owed plaintiff. After the City filed its answer, plaintiff was on notice that ownership was denied, creating an ambiguity. There was sufficient time within the limitations period to make further inquiries regarding ownership in view of the answer provided by the City. Therefore, we agree with the trial court and affirm its decision to deny the motion for a new trial on the basis that the City's interrogatory answer was not a judicial admission.

¶ 21 Plaintiff next argues the trial court should have equitably estopped defendant from denying ownership of the sidewalk.

¶ 22 Equitable estoppel occurs when one party has relied upon another party's false representations in good faith, to the relying party's detriment. *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 155 (2010). To establish equitable estoppel, one must demonstrate: (1) the other party misrepresented or concealed material facts; (2) the other party knew the representations were false when they were made; (3) the party claiming estoppel did not know the representations were false when they were made and acted upon; (4) the other party intended or reasonably expected the party claiming estoppel, or the general public, to act on the false representations; (5) the party claiming estoppel reasonably and detrimentally relied on the representations in good faith; and (6) reliance on the representations prejudiced the party claiming estoppel. *Parks v. Kownacki*, 193 Ill. 2d 164, 180 (2000). All elements must be shown in order to establish equitable estoppel. *Falcon Funding, LLC*, 399 Ill. App. 3d at 157. The question of estoppel depends on the facts of each case. *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 314 (2001). The purpose of the doctrine is to prevent fraud or injustice. *Gorgees v. Daley*, 256 Ill. App. 3d 143, 146 (1993). Courts only invoke equitable estoppel against a

public body in extraordinary or compelling circumstances. *Morgan Place of Chicago v. City of Chicago*, 2012 IL App (1st) 091240, ¶ 33.

¶ 23 Plaintiff's claim that the City was equitably estopped from denying ownership at trial stems from the City's same interrogatory answer underlying plaintiff's judicial admission argument. Plaintiff argues that: (1) the City, in its interrogatory answer, represented to plaintiff that it owned the sidewalk where plaintiff fell; (2) plaintiff reasonably relied on that statement; and (3) plaintiff was prejudiced because of this reliance, in that he did no further investigation as to ownership prior to the running of the statute of limitations. However, because we find the City's answer to Interrogatory 2 was not a judicial admission of ownership of the sidewalk, plaintiff could not have reasonably relied upon it for that purpose.

¶ 24 In addition, we find it relevant that a publicly available ordinance revealed the sidewalk's true owner as Union Station and not the City. To benefit from equitable estoppel, plaintiff must have "had no knowledge or means of knowing the true facts." *Lissner v. Michael Reese Hospital & Medical Center*, 182 Ill. App. 3d 196, 207 (1989). Here, as established by the record, a public ordinance identified Union Station as the true owner of the sidewalk where plaintiff fell. When a party fails to disclose information from publicly available records, reliance on such failure cannot be reasonable under the equitable estoppel doctrine. *Vaughn v. Speaker*, 126 Ill. 2d 150, 165-66 (1988) (analyzing *Lowenberg v. Booth*, 330 Ill. 548, 556 (1928)). Accordingly, we find plaintiff could not have reasonably relied on the City's answer to Interrogatory number 2 as a representation that the City owned the sidewalk where ownership had previously been established by a validly enacted ordinance. Therefore, we affirm the trial court's denial of plaintiff's motion for a new trial on the basis that the trial court properly denied plaintiff's motion

to equitably estop the City from denying ownership of the sidewalk.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.