2011 IL App (2d) 101220-U
No. 2-10-1220
Order filed October 12, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SANDRA SCHMITT,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 07-L-735
	)	
Du PAGE COUNTY FOREST PRESERVE	)	
DISTRICT,	)	Honorable
	)	John T. Elsner,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: Where there were no genuine issues of material fact and defendant's conduct did not, as a matter of law, rise to the level of willful and wanton, defendant was immune from liability for plaintiff's injuries under section 3-106 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-106 (West 2006)), and the trial court's entry of summary judgment in defendant's favor was affirmed.

¶ 1 Plaintiff, Sandra Schmitt, appeals from the trial court's order granting defendant's motion for summary judgment. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 In April 2006, defendant, the Du Page County Forest Preserve District, built a stone stairway on the side of a hill in the Blackwell Forest Preserve in Du Page County. The stairway began at a parking lot and went up to a scenic overlook and picnic area. It was comprised of irregularly shaped stone blocks of different heights and widths. After building the stairway, defendant installed a handrail on each side.

¶ 4 On July 23, 2006, plaintiff and her husband visited the Blackwell Forest Preserve. Although they had been there before, the stairway was new to them. After ascending the stairway and walking around for a few minutes, they began to descend the stairway back to the parking lot. As plaintiff followed her husband, she noticed it was steep, but held the handrail and took a few steps without incident. After a couple of steps, plaintiff's foot went off the stairway into the grassy area. She fell, hit her head on the handrail, and landed on the stairs.

¶ 5 Plaintiff filed suit against defendant and the County of Du Page, alleging negligence and willful and wanton conduct in the construction and maintenance of the stairway. Plaintiff subsequently voluntarily dismissed Du Page County from the suit. The trial court granted defendant's motion to dismiss the negligence count with prejudice based on section 3-106 of the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/3-106 (West 2006)). The court dismissed the willful and wanton count without prejudice, and gave plaintiff leave to replead, which she did. In her amended complaint, plaintiff alleged that defendant created an unreasonably dangerous condition when it chose nonuniform stones with irregular riser heights and tread depths, placed the handrails more than 12 inches from the stairway, and failed to adequately grade and backfill the area between the stairs and handrails. Plaintiff specifically alleged that defendant violated "various safety rules, regulations and codes, including [the] Du Page County Building Code, [section] 8-116.1 which required that all work to [*sic*] be conducted, installed and

completed in a workmanlike and acceptable manner so as to secure the results intended by the building code."

¶ 6 Defendant filed a motion for summary judgment arguing that plaintiff lacked evidence of willful and wanton conduct as defined by section 1-210 of the Act (745 ILCS 10/1-210 (West 2006)). Defendant also maintained that it was immune from suit under sections 2-109 and 2-201 of the Act (745 ILCS 10/2-109, 2-201 (West 2006)) based on defendant's construction and maintenance of the stairway being discretionary acts and under section 3-107 of the Act (745 ILCS 10/3-107 (West 2006)) based on the stairway being part of an access road or trail. Defendant further argued that it did not violate any building code or regulation. In support of its motion, defendant attached three transcripts of deposition testimony: one from its maintenance manager, Jerome Potempa; one from its maintenance foreman, Steve Schultz; and one from plaintiff.

¶ 7 Potempa testified that he made the decision to build the stairway. He explained that, although 90 feet from the site of the stairway was a "gravel apron" access point from the parking lot to the picnic area, several unsafe footpaths had been created by people walking up the hill at the stairway site. Potempa originally planned to place stones in the hill to reduce the erosion and increase safety for persons using the footpaths, but decided to build a stairway instead to create an "invitation point" to the picnic area at the top of the hill.

¶ 8 Potempa testified that no outside contractors, engineers, or architects were involved in the project and that he was not aware of any applicable building codes. Potempa and his foreman, Steve Schultz, went to a landscaping supplier and selected stones that were "fairly uniform as much as possible" while maintaining a "naturalistic setting." They chose chipped "outcropping pieces of stone" instead of cut stones. The goal was not to create "perfect" stairs, but to design a "landscape stairwell." Potempa said that it was "common sense" to make the stairs as uniform as possible, but

that he would not have built the stairway at all if it had to been done with poured concrete or cut stone, although he acknowledged that that might have been safer. He said, "Each piece was basically custom set to try to correlate to the existing topography." The stairway was to "aid *** the outdoor experience" like in other parks in Northern Illinois, such as Starved Rock State Park. According to Potempa, the preserve's patrons could decide whether to use the gravel apron or to "negotiate" the stairs. No signs were posted.

¶ 9 Potempa testified that, after the stairway was completed, he decided to install handrails and asked Schultz to research the height requirements. Although Potempa did not think handrails were necessary, he thought it was the "right thing" to do for safety. Potempa agreed that a person using the stairs and holding onto the handrail might step down onto grass rather than a step. He said that he thought that if that happened, "most people would let go of the handrail." At some point, employees added pieces of stone to a few steps; Potempa could not recall if that was before or after plaintiff's accident. After the accident, Potempa evaluated the handrails and had them moved in closer to the stairs.

¶ 10 Potempa said that he believed that the stairway was safe. He walked the stairs himself at least once a week. Potempa also observed persons using it and even made "special trips on weekends when they [we]re very crowded." He never saw anyone have any difficulty on the stairway. Plaintiff's accident was the only stairway incident of which Potempa was aware.

¶ 11 Steve Schultz testified at his deposition that he was the maintenance foreman of defendant's "trails and streams crew" responsible for constructing and maintaining the trails. Schultz reported to Potempa. Schultz's testimony was substantially the same as Potempa's, with the following additions.

¶ 12 Schultz testified that he was not involved in any stairway projects prior to the one at issue. Most trail construction jobs involved blueprints and building permits but Schultz was not aware of any for the stairway project. Schultz described the area where the stairway was installed similarly to Potempa, adding that the gravel access was about 10 feet wide and had "a very slight incline." Schultz did not discuss safety with Potempa, did not evaluate any type of code or safety standard, and was not aware that any applied.

¶ 13 Describing the selection of stones for the stairway, Schultz explained, "I didn't want it to look blocky. I wanted it to look natural." He agreed that stairs with irregular surfaces were "potentially" less safe than those with flat surfaces. The installation of the handrail was "precautionary" and was done by carpenters from the physical plant department. Schultz researched proper handrail height on the internet and found that it should be between 34 and 38 inches. He could not recall if that was before the original installation or after when they moved the railing. Schultz did not know if the handrails' height was changed when they moved it in closer to the stairs. When asked if a person starting at the top of the stairway and walking down along the right edge would sometimes step down to find no stair underfoot, Schultz responded, "It looks like that could be the case." He agreed that persons so walking, who continuously held the handrail, would be pulled off the stairs and onto grass or gravel "[i]f they continued to hold on." Schultz did not see any safety concerns because "[i]f you're going to pull yourself off the stairs, you should have let go of the railing."

¶ 14 Schultz walked on the stairway every couple of weeks and visually inspected it. Schultz believed that the stairway was safe. He never saw anyone trip or fall on the stairway.

¶ 15 Plaintiff testified at her deposition that on July 23, 2006, she and her husband drove to the Blackwell Forest Preserve to take a walk. They noticed a new stairway and decided to climb it

because they were curious about what was at the top. Plaintiff was not aware of any other route up the hill. When asked to describe her ascent, plaintiff explained, "Well, we just made our way up the stairs. It was clumsy, I'll give you that, because the stairs were not consistent with each other. But, um, we just traipsed up there." When asked if she watched each step as she went up, plaintiff replied, "Well, I think I could say I watched up but in a relaxed way. Just the way anyone would maneuver stairs." The stairs were comprised of stone slabs of differing heights and widths. Despite the stairs being clumsy, plaintiff did not really encounter any difficulty in her ascent and did not use the handrail.

¶ 16 Plaintiff testified that, as she and her husband began to descend the stairway, her view from the top was hindered because of the stairway's steepness. When asked if she could see the next step down, plaintiff said, "I could probably see the edge of it. But to look directly down, possibly not." As she began walking down, she thought that the steps seemed a lot steeper going down than they had going up. Plaintiff held the railing with her right hand. She had to extend her arm to reach it. Some stairs required more than one step to negotiate. Plaintiff walked behind her husband who "was just flying down [the] stairs" and not holding the handrail. He was not going fast but was "going without help and stuff." Plaintiff fell within the first three or four stairs when she took a step and "[her] body didn't land on anything and [she] swung over." She thought her foot went into a hole. As she continued holding the railing, it "led" her off the stair. Plaintiff recalled hitting her head above the right ear on the railing but could not recall anything after that.

¶ 17 Plaintiff testified that when she visited the stairway with her attorney after the accident she saw a young girl fall on the stairs. She was not aware of anyone falling on the stairs prior to her accident.

¶ 18 Plaintiff filed a response to defendant's motion for summary judgment and attached the transcript of the deposition testimony of one of defendant's carpenters, Thomas Vesely, who worked on the stairway's handrails. Vesely testified that the carpenters were asked to do the handrail work because Schultz's crew "just couldn't figure out how to get it to work down the side of the hill because obviously it's a hillside, it's not a staircase." Vesely explained, "So they had us come in in order to try and maintain a proper height for the handrail." After measuring the distances between the posts placed at the stairway by Schultz's crew, Vesely and his crew routed and sanded the handrails and installed them on the posts. Vesely did not know how far the posts were from the stairs. He was not responsible for safety assessments. Vesely cut the posts to make sure that the bottom edge of the railing was as close to 24 inches above the stairs as possible. He was not aware of any code relating to the placement or height of a handrail for stairs inside of a building but said that handrails were "normally" 24 inches off of "the run of the stair." Vesely explained that the different-sized stones in the stairway were "not an ideal situation" so that the handrails would not be "perfectly at 24 inches above the stones because that couldn't happen in this situation." Vesely testified that, although he did not measure the distance from the bottom of the handrail to the ground, "[t]hey are all pretty much going to be about 32 inches." Vesely was not aware of any internet search for handrail height standards.

¶ 19 Vesely agreed that the codes applicable to indoor stairways required uniform riser and tread distances and that the carpenters had access to an Occupational Safety and Health Act (OSHA) manual and other manuals in their shop. He did not know of any codes applicable to outdoor stairways such as the one at issue. He explained that the required specifications were controllable in a constructed stairway but not in stone. Vesely said that this was a "landscape situation" and that the stairway at issue was really a "stone walkway" and he "wouldn't really call it a stairway."

¶ 20 Vesely viewed the stairs as an improvement, a means of getting to the top without climbing the hill, "which seemed a lot more dangerous." He was not aware of anyone other than plaintiff being injured or tripping on the stairs.

¶ 21 Plaintiff also attached an affidavit from her proffered expert, Scott Sebastian, a civil engineer in the construction industry. On plaintiff's motion to supplement the record, Sebastian's deposition was subsequently filed with the court. According to Sebastian, the Du Page County Building Code and the Illinois Accessibility Code specifically applied to the stairway at issue. He also testified that the American National Standards Institute and the International Building Code were model codes that could be adopted by local jurisdictions and that "most local codes follow the elements that are articulated in these standards." With respect to OSHA standards, Sebastian stated that they applied specifically to the stairway at issue because it was part of defendant's employees' workplace, though they did not apply to plaintiff, who was not an employee. Sebastian testified that "[a]ll these codes talk about uniform riser heights, uniform tread depths, specify handrail dimensions, handrail heights, maximum dimensions for risers." He explained that all of the codes were consistent with each other and reflected the industry standard regarding the design, construction, and maintenance of stairs that should be followed for safety even if a particular code were not specifically applicable. According to Sebastian, the preserve's stairway was not unique because it was open to the public and the same risks of falling inhered in it as on any stairway.

¶ 22 Sebastian testified that he physically inspected the Blackwell stairway. He stated that the stairs violated "virtually every" standard because they did not have uniform riser heights or tread depths, the handrails were too low and too far from the stairway, and the edge of the stairway was not aligned. Sebastian testified that it was not "readily apparent" to him that an alternate route

existed to access the top of the hill. He also said that there was no sign or any other indication that anyone was prohibited from using the stairs.

¶ 23 After hearing argument, the trial court granted defendant's motion for summary judgment. The court found that there was no genuine issue of material fact and that, drawing all reasonable inferences in plaintiff's favor, a jury could not find that defendant's actions were willful and wanton. The court further found that the "Du Page County ordinance regarding the construction of structures" did not apply to the stairway. After the court denied her motion to reconsider, plaintiff timely appealed.

¶ 24 ANALYSIS

¶ 25 Plaintiff argues that the trial court erred in entering summary judgment in defendant's favor because there were genuine issues of material fact regarding whether defendant's conduct was willful and wanton, whether various building codes applied to the stairway and were violated by defendant, and whether the stairway was part of an access road or trail. Summary judgment is proper when the pleadings, admissions, depositions, and affidavits on file, viewed in the light most favorable to the nonmovant, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 228 (2007). A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts. *Adames v. Sheahan*, 233 Ill. 2d 276, 296 (2009). The grant or denial of a motion for summary judgment is reviewed *de novo*. *Hernandez v. Alexian Brothers Health System*, 384 Ill. App. 3d 510, 519 (2008). We may affirm the trial court's judgment on any basis supported by the record, regardless of the trial court's reasoning. *Allianz Insurance Co. v. Guidant Corp.*, 387 Ill. App. 3d 1008, 1026 (2008).

¶ 26 Here, the trial court found that defendant's conduct was not willful and wanton as a matter of law and that the Du Page County Building Code did not apply to the stairwell. The court had previously dismissed plaintiff's negligence count pursuant to section 3-106 of the Act, which provides immunity for local public entities under the following circumstances:

> "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 2006).

Thus, under section 3-106, defendant can be liable for plaintiff's injuries only if its conduct was willful and wanton.

¶ 27 Section 1-210 of the Act defines willful and wanton conduct as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210 (West 2006). "The term 'willful and wanton' includes a range of mental states from actual or deliberate intent to cause harm, to utter indifference for the safety or property of others, to conscious disregard for the safety of others or their property." *Murray*, 224 Ill. 2d at 235. The term "unquestionably contemplates conduct by omission." *Murray*, 224 Ill. 2d at 243. A public entity may be found to have engaged in willful and wanton conduct only if it was informed of a dangerous condition on the recreational property, knew that others had been injured as a result of the dangerous condition, or intentionally removed a safety device or feature from the recreational property. *Koltes v. St. Charles Park District*, 293 Ill. App. 3d 171, 178 (1997). "Inadvertence, incompetence, or

unskillfulness does not constitute willful and wanton conduct." *Floyd v. Rockford Park District*, 355 Ill. App. 3d 695, 701 (2005). Whether conduct is willful and wanton is generally a question of fact to be decided by a jury; however, where the record contains "absolutely no evidence that the defendant displayed either an utter indifference to or a conscious disregard for the plaintiff's safety," the court may decide the question as a matter of law. *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 111 (2008).

¶ 28 Here, plaintiff raises no argument that defendant knew of anyone else being injured on the stairway, that anyone ever complained about the stairway, or that defendant removed any safety device from the stairway. Rather, plaintiff contends that defendant "consistently chose visual compatibility over safety" when it "purposely constructed, and then maintained, a dangerous stairway" that it knew violated recognized safety codes and standards and placed the public at risk of serious injury. Plaintiff maintains that there are "numerous contested issues of material fact and disputed inferences" requiring that the case go to a jury and rendering summary judgment improper.

¶ 29 Viewing the record in the light most favorable to plaintiff, the following facts are undisputed. Defendant deviated from its original plan to place stones to prevent erosion on the hill and instead installed a stairway. Defendant chose to use irregular "outcropping stones." The riser height and tread depth of the stairs was not uniform and the edges of the stairs did not align; thus, the stairway did not conform to the requirements of various building codes. Uniform stairs comprised of cut stones or poured concrete would have been safer. After installing the stairway, but prior to plaintiff's accident, defendant added handrails that were too far from the edge of the stairway. The handrail placement resulted in a situation where a person using the stairs and continuously holding the handrail could be pulled off the stairway. After plaintiff's accident, defendant moved the handrails in closer to the stairs. There was insufficient grading and backfill in the area next to the

stairs. At some point, defendant added stone pieces to some of the stairs. Defendant was unaware of any other accident or incident involving the stairway prior to plaintiff's fall.

¶ 30 On these undisputed facts, a jury certainly could have found that defendant was negligent in its creation and maintenance of the stairway. However, we conclude that defendant's conduct did not, as a matter of law, rise to the level of willful and wanton conduct. Potempa and Vesely both testified that, prior to the stairway's installation, the erosion and footpaths created by the public climbing the hill created an unsafe condition. Defendant sought to remedy the hazard it perceived—initially with the placement of stones, then with the installation of the stairway. Potempa and Schultz both testified that they sought the most uniform naturalistic stones possible. They added the handrails as a safety precaution. Neither Potempa nor Schultz was aware of any applicable codes and both thought that the stairs were safe. They walked the stairs regularly, never had any problems, and never observed anyone having problems. Potempa likened the stairway to those at state parks, such as Starved Rock. All of these facts, and any reasonable inferences to be derived therefrom, evince a concern for safety. See *Mitchell*, 386 Ill. App. 3d at 112 (holding that the facts that the defendant school closely supervised the special needs student plaintiff, that the defendant did not believe that the plaintiff was at risk, and that the defendant still continued to monitor the plaintiff evinced a concern for the plaintiff's safety).

¶ 31 If defendant's assessment of the stairway's safety was inadequate, then its conduct might have been negligent, but these facts do not in any way suggest that defendant was conscious that its conduct would likely result in injury based on the surrounding circumstances (see *Kirwan v. Lincolnshire-Riverwoods Fire Protection District*, 349 Ill. App. 3d 150, 155 (2004)). Notwithstanding plaintiff's contrary position, that Potempa and Schultz acknowledged that the stairway might have been *safer* if it were uniform does not indicate that they thought it was *unsafe*.

While it is true that defendant's employees eschewed cut stones to maintain a naturalistic setting and that they were not seeking to build a "perfect" stairway, but rather a "landscape stairwell," the employees' undisputed testimony indicates that they were conscious of safety issues.

¶ 32 Moreover, that Potempa and Schultz both testified that a person should let go of the handrail if he or she were being pulled off the stairway is not inconsistent with our conclusion. The stairway was located in a forest preserve where people came to walk, hike, and bicycle outdoors in nature. We cannot say that defendant's conduct in this setting was inappropriate, let alone outrageous. See *Kurczak v. Cornwell*, 359 Ill. App. 3d 1051, 1060 (2005) ("A defendant's 'utter indifference' or 'conscious disregard' for the safety of others may be inferred from the outrageous nature of the conduct."). Indeed, plaintiff herself testified that her husband "was just flying down [the] stairs" and not holding the handrail.

¶ 33 In support of her position, plaintiff cites *Murray*, 224 Ill. 2d 213, and *Muellman v. Chicago Park District*, 233 Ill. App. 3d 1066 (1992). Both cases are distinguishable. In *Murray*, a 13-year-old student was rendered a quadriplegic when he attempted to perform a forward flip off a mini-trampoline during an extracurricular tumbling class. He and his mother brought suit alleging willful and wanton conduct against the school board, the Chicago Youth Center, which operated the class, and the class instructor. *Murray*, 224 Ill. 2d at 217. The trial court entered summary judgment in defendants' favor and the appellate court affirmed. *Murray*, 224 Ill. 2d at 216-17. The supreme court reversed and remanded, concluding that the evidence demonstrated that the risk of "catastrophic injuries," including spinal cord injuries, associated with mini-trampolining was well known, that the program was not supervised by a professionally-prepared instructor or taught properly with risk reminders incorporated into the program, that trained spotters and safety equipment were not provided at all times, and that none of the United States Gymnastic Federal

Safety Manual guidelines were followed. *Murray*, 224 Ill. 2d at 246. Thus, the court held that, because genuine issues of material fact existed as to whether defendants' conduct was willful and wanton, summary judgment should not have been entered. *Murray*, 224 Ill. 2d at 246.

¶ 34 In *Muellman*, the plaintiff filed suit alleging willful and wanton conduct by the defendant, Chicago Park District, after she was injured when she stepped into an open pipe in Chicago's Grant Park. *Muellman*, 233 Ill. App. 3d at 1066-67. Following a bench trial, the court entered judgment for the plaintiff. *Muellman*, 233 Ill. App. 3d at 1068. At trial, the defendant's supervisor of lawn maintenance testified that he and other personnel knew that pipe lids were being stolen and that the defendant did not have any policy for inspecting the pipes that had not been used in 26 years. *Muellman*, 233 Ill. App. 3d at 1068. One of the defendant's labor foreman testified that he and a few other employees painted some pipes orange and yellow, but only those pipes they thought could damage the defendant's mowing equipment. *Muellman*, 233 Ill. App. 3d at 1067. He further testified that, when choosing which pipes to paint, the defendant was not concerned about the pipes that were closer to the ground where people might trip over them. *Muellman*, 233 Ill. App. 3d at 1067-68. The appellate court affirmed the trial court's judgment, concluding that there was sufficient evidence that the defendant's conduct evinced a conscious disregard for public safety. *Muellman*, 233 Ill. App. 3d at 1069-70.

¶ 35 The facts in the present case do not rise to the level of those in *Murray* or *Muellman*. In *Murray*, the court held that the danger of "catastrophic" injury associated with mini-trampolining was well known, and in *Muellman*, the defendant's employees testified that they were aware of the hazards posed to park patrons by the pipes. Here, Potempa and Schultz testified that they thought the stairs were safe. They both used the stairs on a regular basis and observed preserve patrons using them; neither saw anyone have any difficulty with the stairs. Defendant's conduct in the

instant case certainly did not evince an utter indifference to safety as in *Murray*, where the high-risk activity of trampolining was involved. We note that trampolining is included in the list of hazardous recreational activities in section 3-109 of the Act (745 ILCS 10/3-109 (West 2006)). In contrast, the recreational activity at issue here is the commonplace activity of walking on stairs. Neither did defendant's conduct exemplify a conscious disregard for safety as in *Muellman*, where the defendant affirmatively took action to protect its own equipment by painting taller pipes but was not concerned about people tripping on the shorter pipes.

¶ 36 Plaintiff analogizes the defendants' failure in *Murray* to comply with the applicable gymnastics standards to defendant's failure in the instant case to comply with various building codes. However, *Murray* contains no suggestion that the defendants there believed the standards were not applicable, as defendant here did. Potempa, Schultz, and Vesely all testified that they were not aware of any applicable building codes. Potempa thought that the stairway at issue was similar to those in other recreational facilities such as Starved Rock State Park.

¶ 37 Plaintiff also maintains that defendant's violation of applicable building codes was evidence of willful and wanton conduct. Notwithstanding plaintiff's argument to the contrary, the applicability of building codes to a particular project is a question of law. See *Stackman v. City of Geneva*, 395 Ill. App. 3d 489, 492 (2009) (considering the applicability of provisions of a municipal code to a homeowner's authority to install new windows). Thus, the deposition testimony of plaintiff's proffered expert, Sebastian, concluding that various codes are applicable, is not relevant.

¶ 38 In any event, the applicability of building codes and safety regulations has no bearing on the question of whether defendant's conduct here was willful and wanton. Plaintiff argues that, even if these codes and regulations are not technically applicable to the stairway, they are all consistent

and represent general safety standards in the industry and that, therefore, defendant's failure to follow their recommendations constituted willful and wanton conduct.

¶ 39 A plaintiff alleging willful and wanton conduct must show a duty, a breach of that duty, an injury proximately caused by the breach, and the defendant's utter indifference to or conscious disregard for the plaintiff's safety. *Kurczak*, 359 Ill. App. 3d at 1060. The existence of even inapplicable building codes might be evidence of the existence of a duty or of the ordinary standard of care in a negligence action. See *Schultz v. Northeast Illinois Regional Commuter Railroad Corp.*, 201 Ill. 2d 260, 298 (2002); *Snyder v. Curran Township*, 167 Ill. 2d 466, 472 (1995). However, because defendant's employees testified that they were not aware of any applicable code, the existence of an applicable code has no bearing on whether defendant consciously disregarded or was utterly indifferent to the safety of persons such as plaintiff when it constructed the staircase. This is so because, if defendant had a good faith belief that no building code applied, it cannot be said to have consciously disregarded it.

¶ 40 In sum, we hold that defendant's conduct was not, as a matter of law, willful and wanton. Thus, under section 3-106 of the Act, defendant was immune from liability for plaintiff's injuries. Accordingly, we affirm the trial court's entry of summary judgment in defendant's favor. Based on our decision, we need not address, and thus, express no opinion on, plaintiff's remaining arguments against defendant's alternative suggestions for affirming the trial court based on immunity under sections 2-109 and 2-201 (for discretionary acts) and section 3-107 (for access roads and trails) of the Act.

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 42 Affirmed.