No. 3--10--0334

Order filed April 20, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

DONALD McCULLOUGH, SR.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	No. 08--L--145
	)	
GODLEY PARK DISTRICT,	)	Honorable
	)	Michael J. Powers,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

Held: Summary judgment in favor of a park district was upheld because there were no facts in the record that would support a conclusion that the park district's conduct in salting its parking lot and sidewalks for ice was willful and wanton.

The plaintiff, Donald McCullough, Sr., filed a first amended complaint against the defendant, Godley Park District, alleging willful and wanton misconduct in the manner in which the defendant maintained its property, which caused the plaintiff to slip and fall and sustain injuries. The trial court granted the

defendant's motion for summary judgment. The plaintiff appealed, arguing that the question of whether the defendant's conduct was willful and wanton was an issue for the jury. We affirm.

FACTS

The plaintiff stated in his deposition that he drove to the defendant's community center on the morning of February 20, 2007, to walk on its indoor track. The plaintiff arrived at about 6:10 a.m. and parked in a handicapped spot near the entrance. After exiting his vehicle, the plaintiff took about three or four steps towards the sidewalk before he slipped and fell backwards. Although the plaintiff did not recall seeing any ice or snow as he drove into the parking lot, he believed that he slipped on some ice. He injured his left shoulder and his head. The plaintiff got up and walked into the community center, and the defendant's staff called an ambulance to transport the plaintiff to the hospital.

According to Edward VanWinsen Jr., the defendant's building and grounds supervisor, he went into work early on the morning of February 20 because he was concerned about the weather conditions. Although there had been no snow or freezing rain the night before, the temperature had been warm overnight, and the weather report indicated that the temperature was going to drop. By the time of the plaintiff's accident, VanWinsen had already salted the sidewalk areas that looked slick, and he was on his

way back outside to put down more salt. VanWinsen stated that his usual practice was to also throw salt in the loading zone and in handicapped parking areas if he saw ice.

Joseph Cosgrove, the defendant's director of parks and recreation, indicated that the buildings and grounds maintenance staff was responsible for plowing, shoveling, and salting the defendant's lots and sidewalks prior to the community center's opening at 6 a.m. For that purpose, the defendant had a truck with a snow plow for the parking lot and a snowblower, a shovel, and a broadcast spreader for the sidewalks. There was no written policy for salting; the employees were expected to use common sense after observing the conditions.

The plaintiff's first amended complaint alleged that the defendant acted with willful and wanton conduct in: (1) failing to warn him of the hazardous conditions that existed on the property; (2) failing to maintain the area in a reasonably safe condition; and (3) in creating the hazardous conditions. The defendant moved for summary judgment, arguing that there were no facts presented that showed that there was an unnatural accumulation of snow or ice, so it owed no duty to the plaintiff. Alternatively, the defendant argued that it was entitled to summary judgment because the plaintiff failed to put forth any evidence showing that the defendant acted willfully and wantonly. The trial court granted the motion, determining that there was no

material issue of fact as to the defendant's lack of willful and wanton conduct. The plaintiff appealed.

ANALYSIS

The plaintiff contends that the issue of defendant's willful and wanton conduct is a question of fact for the jury. The defendant argues that summary judgment was proper because there was no evidence in the record that the defendant owed the plaintiff a duty and because there was no evidence to support a finding that the defendant acted willfully and wantonly.

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2--1005(c) (West 2006). In determining whether a genuine issue as to any material fact exists, pleadings, depositions, and admissions are construed against the party moving for summary judgment. *Williams v. Manchester*, 228 Ill. 2d 404 (2008). Summary judgment is inappropriate "where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Williams*, 228 Ill. 2d at 417. Summary judgment is appropriate where the plaintiff cannot establish an element of the cause of action. *Williams*, 228 Ill. 2d 404. We review *de novo* the granting of summary judgment.

Williams, 228 Ill. 2d 404.

The defendant, a park district, is immune from a negligence claim under section 3--106 of the Local Governmental and Governmental Employees Tort Immunity Act (the Tort Immunity Act) (745 ILCS 10/3--106 (West 2006)) for injuries occurring on public property used for recreational purposes. However, the Tort Immunity Act does not immunize the defendant from liability as to willful and wanton conduct that proximately causes a plaintiff's injury. Whether conduct is willful and wanton is generally a question of fact, but a court may hold as a matter of law that a public entity's actions do not amount to willful and wanton conduct where no other contrary conclusion may be drawn from the record. *Williams v. City of Evanston*, 378 Ill. App. 3d 590 (2007). The Tort Immunity 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).

In the present case, there are no material facts in dispute. The plaintiff fell in the defendant's parking lot. The defendant had a plan and materials for dealing with snow and ice, and its building and grounds supervisor had come in to work early to address a potential weather problem caused by falling temperatures. There are no facts in the record that would

support a finding that the defendant had an actual or deliberate intention to cause harm. In addition, there are no facts in the record to support a conclusion that the defendant was utterly indifferent or consciously disregarded the safety of the plaintiff or other people visiting the community center that day. In fact, the facts clearly show the opposite. We affirm the grant of summary judgment.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

Affirmed.