2011 IL App (3d) 100858-U

Order filed November 1, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

JANET HARMS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois
	)	
v.	)	Appeal No. 3-10-0858
	)	Circuit No. 09-L-605
	)	
VILLAGE OF ROMEOVILLE,	)	Honorable
	)	Michael J. Powers,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice O'Brien dissented in the judgment.

ORDER

¶ 1 *Held*: In a negligence action predicated on a sidewalk defect, the appellate court held that the circuit court did not err when it ruled as a matter of law that the sidewalk defect was *de minimis* and that the municipality did not have notice of the defect.

¶ 2 The plaintiff, Janet Harms, sued the defendant, the Village of Romeoville, for negligence after she tripped on a sidewalk and sustained injuries. The defendant filed a motion for summary judgment, which the circuit court granted. On appeal, the plaintiff argues that the court erred when it ruled that: (1) the height variation in the concrete sidewalk slabs was a *de minimis* defect; and (2) the defendant did not have constructive knowledge of the defect. We affirm.

¶ 3 The plaintiff's negligence complaint alleged that she tripped and fell on a sidewalk in a residential neighborhood in Romeoville and sustained injuries. The complaint also alleged that the defendant was negligent in its duty to maintain the sidewalk. During discovery, it was determined that the variation in height between the concrete slabs in the sidewalk was between 1¼ and 1½ inches. The sidewalk was in a residential neighborhood, and the day on which the plaintiff tripped was a dry and sunny August day. She tripped when she turned around to pick up the sunglasses she dropped while walking. Further, it was determined that the defendant had not received any complaints about the condition of the sidewalk in question before the plaintiff's injury.

¶ 4 The defendant filed a motion for summary judgment. After a hearing, the circuit court granted the motion, ruling as a matter of law that the under-1½-inch height variation was a *de minimis* defect and that the defendant had no notice of the defect. The plaintiff appealed.

¶ 5 On appeal, the plaintiff argues that the court erred when it ruled that: (1) the defect was *de minimis*; and (2) the defendant did not have constructive knowledge of the defect.

¶ 6 Summary judgment is appropriate if "the pleadings, deposition, and admissions on file, together with the affidavits, if any," when construed in the light most favorable to the nonmoving party, reveal that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008); *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). We review a circuit court's decision on a summary judgment motion under the *de novo* standard. *Adams*, 211 Ill. 2d at 43.

¶ 7 Section 3-102(a) of the Local Governmental and Governmental Employees Tort Immunity Act provides:

> "Except as otherwise provided in this Article, 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, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that it is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition." 745 ILCS 10/3-102(a) (West 2008).

For negligence purposes, whether a municipality possessed a duty in a particular instance requires courts to consider: "(1) the foreseeability that defendant's conduct will result in injury to another; (2) the likelihood of injury; (3) the magnitude of guarding against it; and (4) the consequences of placing that burden upon defendant." *Sandoval v. City of Chicago*, 357 Ill. App. 3d 1023, 1027 (2005).

¶ 8 Municipalities are not required to keep all sidewalks in perfect condition at all times. *Arvidson v. City of Elmhurst*, 11 Ill. 2d 601, 604 (1957). "[A] jury question on the issue of the city's negligence is presented only when the defect in the sidewalk is such that a reasonably prudent man should anticipate some danger to persons walking upon it." *Arvidson*, 11 Ill. 2d at 605; see also *Warner v. City of Chicago*, 72 Ill. 2d 100, 104 (1978) (recognizing that minor defects in sidewalks are not actionable). There is no mathematical standard to determine whether a sidewalk defect is *de minimis*. *Birck v. City of Quincy*, 241 Ill. App. 3d 119, 122 (1993). "The surrounding circumstances, particularly whether the sidewalk is located in a commercial or

residential neighborhood and the anticipated volume of traffic on the sidewalk, are to be taken into consideration." *Birck*, 241 Ill. App. 3d at 122.

¶ 9 Our review of the record in this case reveals that the circuit court did not err when it ruled as a matter of law that the defect was *de minimis*. The height variation between the two slabs of concrete was between 1¼ and 1½ inches. The sidewalk was in a residential area, rather than in a high-traffic commercial area. See, *e.g.*, *Baker v. City of Granite City*, 75 Ill. App. 3d 157, 160 (1979) (noting the potential impact a busy commercial location can have on whether a 1¼-inch defect is actionable). The plaintiff tripped on the sidewalk on a dry and sunny August day when she turned around to pick up the sunglasses that she dropped while walking. There was no city policy requiring the repair of defects of this height, as there was in *Martinkovic v. City of Aurora*, 150 Ill. App. 3d 589, 594 (1986) (finding a height variation of 1⅜ inches actionable in light of the city's express policy to repair all defects greater than one inch). In light of the tremendous economic burden that would be placed on municipalities if they were required to repair every slight sidewalk defect in the miles of sidewalk under their possession (*Birck*, 241 Ill. App. 3d at 123-25), we hold that the circumstances of this case render this defect *de minimis* (see, *e.g.*, *Warner*, 72 Ill. 2d at 104-05 (noting that, absent the special circumstances in that case, "we believe that the city's evidence, a 1⅛-inch-maximum height variation, would indicate that, in view of the surrounding circumstances, no cause of action would lie due to the minimal nature of the defect")).

¶ 10 Further, discovery revealed that the defendant had not received any complaints about that particular sidewalk prior to the plaintiff's injury. While the plaintiff claims that an employee of the defendant stated in a deposition that the defect existed for eight years prior to the plaintiff's

injury, the employee never stated as such. In fact, there is absolutely nothing in the record to support the plaintiff's claim in this regard. Under these circumstances, we hold that the circuit court did not err when it ruled as a matter of law that the defendant had no notice of the sidewalk defect.

¶ 11 For the foregoing reasons, we hold that the circuit court properly granted the defendant's motion for summary judgment.

¶ 12 The judgment of the circuit court of Will County is affirmed.

¶ 13 Affirmed.

¶ 14 JUSTICE O'BRIEN, dissenting:

¶ 15 I respectfully dissent from the majority because I believe whether the defect in the sidewalk was *de minimus*, is a question of fact that should be answered by the trier of fact and not by the trial court as a matter of law pursuant to a motion for summary judgment. In coming to this conclusion, I rely on our Supreme Court's decision in *Warner v. City of Chicago* as well as *Birck v. City of Quincy*. *Warner v. City of Chicago*, 72 Ill. 2d 100 (1978) and *Birck v. City of Quincy*, 241 Ill. App. 3d 119 (1993).

¶ 16 Therefore, I would reverse the judgment of the trial court and remand this matter for further proceedings.