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LEGAL ALERT

FAILURE TO REPAIR SIDEWALK AFTER NOTICE OF DEFECT DOES NOT NECESSARILY MAKE PUBLIC BODY RESPONSIBLE FOR RESULTING INJURY

The City of Danville was found immune from liability under the Tort Immunity Act when it was sued by a person who contended the City was at fault for failing to repair an uneven seam between two slabs of concrete sidewalk, causing her to trip, fall and suffer injuries. The Court found that while the City had notice of the defect in the sidewalk, the City was immune under the Tort Immunity Act. The Court found that sections 2-109 and 2-201 of the Tort Immunity Act provided immunity from liability to the City due to its discretionary decision making in determining how, where and when sidewalk maintenance in the City was warranted. *Monson v. City of Danville*, 2017 IL App (4th) 160593

See detailed summary of decision herein.

A full copy of the Appellate decision is available at the following link:

Monson v. City of Danville

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SUMMARY OF DECISION

FACTS

On the day of the accident, the temperature was mild, and streets and sidewalks were wet due to a recent rain. The plaintiff was walking on a sidewalk in the City's downtown district when she walked into about an inch of water that had formed on the sidewalk. When she stepped into the water she felt her left shoe hit something. She lost her balance, fell forward and hit her chin on the sidewalk. Her injuries needed stitches for the cut to her chin, she suffered bruises to her foot, arms, facial area and bicep, along with injuries to her teeth requiring dental work. She sued the City claiming the City willfully and negligently failed to properly maintain and repair an uneven seam between two blocks of sidewalk, causing her to trip and fall.

The City officials responsible for sidewalk maintenance testified that 2 years before the injury they had walked the downtown district, including that stretch of sidewalk and spray painted places that were believed to warrant repair, replacement, or removal. The City engineer then took the same tour with City staff to view and assess each site in need of work to determine what recommendations (if any) to make at that time.

The City Public Works Director testified that decisions regarding what to repair, replace or remove and when regarding portions of concrete sidewalk which may need work are made on a case-by-case basis by considering multiple factors including the following:

- (1) intended use of the area;
- (2) normal path of travel;
- (3) condition of the concrete;
- (4) proximity to other obstructions;
- (5) elevation deviations between concrete sections;
- (6) availability of personnel; and
- (7) costs.

These factors were not set forth in a written City policy but the Director testified that they were developed over many years of consultation and discussion among and between City staff and departments. The Director acknowledged that there was a deviation between the two concrete portions of sidewalk involved, of less than two inches, but that such a deviation by itself did not automatically result in a determination to repair, replace, or remove a portion of sidewalk.



The Director stated that the City had completed a comprehensive inspection of all of the downtown sidewalk conditions 2 years before the accident. City staff and the City engineer would then make initial recommendations regarding areas they felt required priority attention. He noted that he made the final decisions regarding sidewalk maintenance and that he used his discretion as the public works director to determine which portions of sidewalk needed repair and would be repaired next.

REASONING OF COURT

The Court concluded that the factors relied on by the Public Works Director to make decisions regarding sidewalk maintenance were not specified in any written formula or policy of the City which required action if certain specific criteria were met. The plaintiff here claimed City staff had a simple ministerial duty to repair the sidewalk once the City knew it needed repair. In that regard, Section 3-102 of the Tort Immunity Act provides:

“(a) 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





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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 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.

The Court found the Director’s actions here however were discretionary and not ministerial, noting that Illinois courts define a “policy determination” (entitled to immunity under the Tort Immunity Act) as a decision that requires the public entity to balance competing interests and to make a judgment call as to what solution will best serve each of those interests. Here then the Court stated there was no question that the City determined policy when handling sidewalk decisions. Multiple City staff were involved in sidewalk inspections, feedback on which areas may need work, along with weighting multiple additional factors and considerations in determining which areas need repair next.

Section 2-109 of the Tort Immunity Act provides that “[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.” 745 ILCS 10/2-109 (West 2014). Section 2-201 of the Act further provides:

“Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.” 745 ILCS 10/2-201 (West 2014).



COURT DECISION

The Court found that sections 2-109 and 2-201 of the Tort Immunity Act provided immunity from liability to the City based upon its discretionary decision making in determining how, where and when sidewalk maintenance in the City was warranted. The Court noted that such immunity would still apply if the Public Works Director had inspected the sidewalk defect here and exercised his discretion to determine not to do anything, even if that determination could later be viewed as negligent.

The Court here reinforced the principle that simply showing that a municipality has notice of a defect, dangerous condition or need to repair a public improvement does not end the inquiry regarding liability, if the determination regarding repair or maintenance is one involving discretionary decisions by the City.

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