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2018 IL App (3d) 160637-U

Order filed February 2, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

ROY WARD, JR., as Special Administrator of )	Appeal from the Circuit Court
the Estate of Ravante LaTavion Ward, )	of the 10th Judicial Circuit,
Decedent, Individually and on behalf of the )	Peoria County, Illinois.
Heirs of Ravante LaTavion Ward, )	
)	
Plaintiff, )	
)	
v. )	
)	Appeal No. 3-16-0637
MYAH’S CHILDREN CONNECTION, )	Circuit No. 15-L-222
INC., d/b/a Myah’s Just 4 Kids )	
Learning Center, )	
)	
Defendant, Third-Party Plaintiff- )	
Appellant, and Cross-Appellee, )	
)	
(Peoria Park District, )	Honorable
)	Stephen A. Kouri,
Third Party Defendant-Appellee and )	Judge, Presiding.
Cross-Appellant). )	

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JUSTICE O’BRIEN delivered the judgment of the court.  
Presiding Justice Carter and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* A park district's motion to dismiss a third-party complaint against it for contribution in a negligence action was properly dismissed on the basis the park

district was immune from any liability under section 3-110 of the Tort Immunity Act because park district did not own, manage, maintain or control the Illinois River where the child drowned in river floodwaters.

¶ 2 The defendant and third-party plaintiff, Myah's Children Connection, Inc., appealed the dismissal of its third-party action for contribution against third-party defendant, the Peoria Park District, in a negligence action filed against Myah's by the estate of a child who drowned while in Myah's care.

¶ 3 **FACTS**

¶ 4 On October 26, 2015, the plaintiff, Roy Ward, Jr., as special administrator of the estate of Ravante LaTavion Ward, filed suit against Myah's, alleging negligence by Myah's that resulted in the drowning death of Ravante. Ravante was in the care of Myah's, a daycare, when he wandered away from the River Plex Recreation and Wellness Center playground in Peoria on July 17, 2015, and drowned in the Illinois River flood waters. Myah's filed a third-party complaint against the Park District, seeking contribution from the Park District on the basis that the Park District was guilty of willful and wanton acts and/or omissions for building and maintaining a playground near the Illinois River, failing to place a permanent fence to limit access to the Illinois River, failing to place temporary fencing, and/or failing to close the playground and/or prevent use of the playground while the Illinois River was above flood stage levels.

¶ 5 The Park District filed motions to dismiss the third-party complaint pursuant to sections 2-615 and 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-615, 619 (West 2014)). The circuit court granted both of the Park District's motions to dismiss, concluding that the Park District owed no duty to Ravante. In addition, the circuit court held that the Park District was immune from liability under section 3-110 of the Local Governmental and Governmental

Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/3-110 (West 2014)). Myah's filed a motion to reconsider and a motion for leave to file an amended third-party complaint against the Park District. The circuit court denied Myah's motion to reconsider.

¶ 6 The Park District filed a motion for sanctions pursuant to Supreme Court Rule 137 against Myah's for its filing and continued prosecution of the third-party complaint. Myah's responded with its own motion for sanctions against the Park District. The circuit court denied both motions for sanctions and also entered a Rule 304(a) ruling that there was no just reason to delay enforcement of or appeal from the prior orders dismissing Myah's third-party complaint, denying Myah's motion to reconsider and implicitly denying Myah's motion for leave to file an amended third-party complaint, and denying the cross-motions for sanctions. Myah's appealed the dismissal, and the Park District cross-appealed the denial of its motion for sanctions. The plaintiff in the underlying action is not a party to this appeal.

¶ 7 ANALYSIS

¶ 8 With respect to the Park District's section 2-619 motion, Myah's contends that the injury occurred on Park District property, so immunity did not attach. The Park District points to the plain language of the statute, contending that the drowning occurred in, or on property adjacent to the river that it did not own or control.

¶ 9 The Park District's section 2-619(a)(9) motion alleged that it was immune under several sections of the Tort Immunity Act. The circuit court found that the Park District was immune from any liability under section 3-110 of the Tort Immunity Act (745 ILCS 10/3-110 (West 2014)) because the Park District did not own, manage, maintain or control the Illinois River. Our review of a section 2-619 motion to dismiss is *de novo*. *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 34.

¶ 10 Section 3-110 of the Tort Immunity Act provides:

"Neither a local public entity nor a public employee is liable for any injury occurring on, in, or adjacent to any waterway, lake, pond, river or stream not owned, supervised, maintained, operated, managed or controlled by the local public entity." 745 ILCS 10/3-110 (West 2014).

¶ 11 We will assume, for the purposes of this discussion, that the Park District owed a duty to the plaintiff. See *Suchy v. City of Geneva*, 2014 IL App (2d) 130367, ¶ 37 (only when a duty is found can the issue of immunity be considered). However, we agree with the conclusion of the circuit court that the Park District was immune from liability under section 3-110 of the Tort Immunity Act. We find that the mowed lawn in the instant case is like the sea wall in *McCoy v. Illinois International Port Dist.*, 334 Ill. App. 3d 462 (2002). In *McCoy*, a longshoreman slipped off of a sea wall and drowned in the Calumet River. The court in that case concluded that the Port District maintained the wall, but it was immune because it did not control the river. That court held that "[i]f the local public entity or public employee does not own, supervise, maintain, operate, manage or control the waterway, lake, pond, river or stream, there is no liability for any injury occurring on, in, or adjacent to that waterway." *McCoy*, 334 Ill. App. 3d at 468.

¶ 12 There were no allegations that the Park District owned the river or had the authority to exert even minimal control over the river. See *Frayne v. Dacor Corp.*, 362 Ill. App. 3d 575, 581 (2005) (fire departments were immune from liability under section 3-110 for the drowning death of a firefighter during a training exercise because they did not supervise, control, or maintain the lake). Thus, under the plain language of section 3-110 of the Tort Immunity Act, the Park District was immune because there were no allegations that it owned, supervised, maintained, operated, managed or controlled the Illinois River and the injury occurred either in or adjacent to

the Illinois River. Control over the land adjacent to the river did not give the Park District control over the river. See *Choice v. YMCA of McHenry County*, 2012 IL App (1st) 102877, ¶ 46 (supervising students, even at a program located near a river, is not tantamount to supervising the river itself). There is no willful and wanton exception to section 3-110 of the Tort Immunity Act. *Id.* ¶ 52.

¶ 13 Since the motion to dismiss was properly granted under section 3-110 of the Tort Immunity Act, it is not necessary to discuss the other sections regarding immunity. It is also not necessary to address Myah's argument that the circuit court erred in granting the section 2-615 (735 ILCS 5/2-615 (West 2014)) motion to dismiss on the issue of whether the Park District owed a legal duty to warn or to protect the three-year-old child against any open and obvious risk posed by the Illinois River.

¶ 14 As a final matter, the Park District sought sanctions on the basis that Myah's ignored requests to abandon a baseless third-party complaint. Myah's argues that the circuit court did not abuse its discretion. Rule 137(a) provides that every pleading and motion must be signed by an attorney and the signature constitutes a certificate that, to the best of his knowledge, information, and belief, the pleading or motion is well-grounded in fact and warranted by law. Implicit in this rule is the obligation that an attorney promptly dismiss a lawsuit once it becomes evident that it is unfounded. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 13. If the rule is violated, the court may impose sanctions, but is not required to do so. *Id.* A circuit court's decision to deny a motion for sanctions is reviewed for abuse of discretion. *Id.* ¶ 16.

¶ 15 In denying both motions for sanctions, the circuit court found that the underlying issue was difficult. Since Myah's argument that the decedent was too young to be at large was based upon a dissent in an Illinois Supreme Court decision, and its argument regarding the location of

the drowning was complicated by the flood waters outside of the banks of the river, there was no abuse of discretion in denying the Park District's motion for sanctions.

¶ 16

#### CONCLUSION

¶ 17

The judgment of the circuit court of Peoria County is affirmed.

¶ 18

Affirmed.