

NOTICE  
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2018 IL App (5th) 170028-U

NO. 5-17-0028

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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FRANCIS STANLEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 14-L-645
	)	
BI-STATE DEVELOPMENT AGENCY OF THE	)	
ILLINOIS-MISSOURI METROPOLITAN DISTRICT,	)	
d/b/a Metro and Bi-State, a/k/a Bi-State Development	)	
Agency, and SECURITAS SECURITY SERVICES	)	
USA, INC.,	)	
	)	
Defendants	)	
	)	
(Bi-State Development Agency of the	)	
Illinois-Missouri Metropolitan District,	)	Honorable
d/b/a Metro and Bi-State, a/k/a Bi-State Development	)	Vincent J. Lopinot,
Agency, Defendant-Appellee).	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Justices Goldenhersh and Chapman concurred in the judgment.\*

**ORDER**

¶ 1 *Held:* The trial court erred in entering summary judgment in favor of the defendant, where the defendant was operating as a common carrier at the time of the attack on the plaintiff, and therefore not afforded immunity under the Tort Immunity Act.

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\*Justice Goldenhersh fully participated in the decision prior to his retirement. See *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6, 605 N.E.2d 544 (1992).

¶ 2 The plaintiff, Francis Stanley, appeals from an order of the circuit court granting summary judgment in favor of defendant, Bi-State Development Agency of the Illinois-Missouri Metropolitan District, d/b/a Metro and Bi-State, a/k/a Bi-State Development Agency (Metro), on count I of his first amended complaint. For reasons that follow, the order granting summary judgment in favor of Metro is vacated, and the cause is remanded for further proceedings.

¶ 3 At approximately 7:15 p.m. on September 27, 2013, the plaintiff, Francis Stanley, was attacked and beaten by two unknown persons as he ascended a concrete stairway leading to the Jackie Joiner Kersee Metrolink (JJK Metrolink) station in East St. Louis, Illinois. The plaintiff intended to take the train home from work. He had climbed three flights of stairs, reaching the third landing of the stairway, when he was attacked. The stairway was owned and controlled by Metro. It led from a sidewalk on 25th Street to the JJK Metrolink station, a Metro bus turnaround, and a Metro bus stop. A large Metro sign was adjacent to the first landing of the stairway. The plaintiff was hospitalized for head and upper body injuries that he sustained during the attack.

¶ 4 On September 17, 2014, the plaintiff filed a two-count complaint against Metro in the circuit court of St. Clair County. In count I, the plaintiff alleged that Metro was a governmental entity which operated a business that undertook to transport members of the public; that Metro owned and operated the JJK Metrolink station; that Metro had knowledge of previous criminal attacks on its premises by third parties against individual customers attempting to use its transportation services; and that Metro breached its duty to protect the plaintiff from reasonably foreseeable criminal attacks on its premises by

third parties. In count II, the plaintiff alleged that Metro was a local government entity which operated a business that undertook to transport members of the public as a common carrier; that the plaintiff entered Metro's premises with the purpose of using its transportation services; that the plaintiff and Metro had a passenger/common carrier relationship; and that Metro breached its duty to exercise the highest degree of care to protect the plaintiff from reasonably foreseeable criminal attacks on its premises by third parties.

¶ 5 On October 20, 2014, Metro filed an answer to the complaint. As to count I, Metro admitted that it was a quasi-governmental entity, but denied the allegations of duty and liability. In count II, Metro admitted that it was a quasi-governmental entity and that it transported members of the public as a common carrier, but denied that it owed plaintiff a duty of care or that it was liable for plaintiff's alleged injuries. Metro also asserted affirmative defenses, including immunity under the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2014)). On November 3, 2014, the plaintiff filed a reply, denying all of Metro's affirmative defenses.

¶ 6 On May 11, 2015, Metro filed a motion for summary judgment, together with a memorandum of law and supporting affidavits. Metro disputed that the alleged assault occurred, and further disputed that the assault occurred on its property. Metro claimed that even if the assault occurred on its premises, it was entitled to judgment as a matter of law because it was a local government entity within the meaning of section 1-206 of the Tort Immunity Act (745 ILCS 10/1-206 (West 2014)), and that "the alleged failure to

provide police protection services and alleged failure to prevent the commission of a crime are acts for which it cannot be held liable” because it has immunity under section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2014)).

¶ 7 In a supporting memorandum, Metro indicated that it had anticipated that the plaintiff would assert that Metro was a common carrier and was thus excepted from immunity under section 2-101 of the Tort Immunity Act (745 ILCS 10/2-101 (West 2014)). Metro argued that section 2-101 of the Tort Immunity Act did not apply in this case because the plaintiff did not have a passenger/common carrier relationship with Metro at the time of the assault. Metro claimed that the stairway upon which the alleged assault occurred was approximately 100 yards from the platform where passengers are intended to board and disembark from the Metrolink trains, and concluded the plaintiff was not a “passenger” at the time of the assault.

¶ 8 Metro attached affidavits from Kathy Brittin and Steven Devore in support of its motion for summary judgment. Kathy Brittin is Metro’s Director of Risk Management. In her affidavit, Brittin stated that Bi-State was a local governmental entity and a not-for-profit corporation funded by sales taxes, and federal and state grants and subsidies. She further stated that Metro carried out various governmental functions, including but not limited to the provision of public transportation services within the St. Louis metropolitan area, including St. Louis, Missouri, and East St. Louis, Illinois. Brittin averred that Metro contracted with a security company, and that at the time of the occurrence referenced in the complaint, there was a “police presence” on the property, but there was no security guard posted at the JJK Metrolink station. She further averred

that Metro owned and controlled the JJK Metrolink station, including the staircase on the west side of 25th Street where the alleged incident occurred.

¶ 9 Steven Devore is employed by Metro as an Inspector for the Department of Public Safety, Special Operations. In his affidavit, Devore stated that he was familiar with the procedures at the JJK Metrolink station and the layout of that facility. He also stated that he reviewed a police report of the incident and talked with the plaintiff, and that based upon this information, he had knowledge about the location of the attack. Devore asserted that the staircase where the plaintiff was attacked was “approximately 100 yards or 300 feet from the Metrolink train platform,” and that the platform was “the only designated area for intended passengers to board and disembark from the trains.”

¶ 10 Metro also filed a document entitled, “Statement of Uncontroverted Material Facts,” in support of its summary judgment motion. Metro claimed that the document contains nine paragraphs of “uncontroverted material facts.” The affidavits of Metro employees Kathy Brittin and Steven Devore are the main sources for the “uncontroverted facts.” Among those “facts” set forth: Metro is a local public entity and a not-for-profit corporation; Metro provides public transportation services; Metro owns and controls the JJK Metrolink Station, including the staircase on which the alleged attack occurred; the staircase on which the attack allegedly occurred is located approximately 100 yards from the platform, which is intended for passengers to board or disembark Metrolink trains; and at the time of the alleged attack, there was a police presence on the premises, but no security guard was posted.

¶ 11 On June 16, 2015, the plaintiff filed a memorandum in opposition to Metro's motion for summary judgment. The plaintiff initially asked the court to withhold consideration of the motion until the depositions of the parties and corporate representatives could be completed. The plaintiff also addressed the merits of the motion. The plaintiff claimed that there were disputed issues of material fact, including the location of the attack, and that Metro had not established it was entitled to immunity as a matter of law. The plaintiff argued that Metro was a common carrier and had a duty to protect passengers and customers from criminal acts by third persons. The plaintiff also filed a response with objections to specific paragraphs in Metro's "Statement of Uncontroverted Material Facts." The plaintiff claimed that many of the purported "facts" were legal conclusions, and that the statements contained in Steven Devore's affidavit were based on inadmissible hearsay.

¶ 12 On June 17, 2015, Metro's motion for summary judgment was called for hearing, and it was taken under advisement. On July 13, 2015, the trial court summarily denied the motion.

¶ 13 On July 29, 2015, the plaintiff filed a motion to amend his complaint to add Securitas Security Services USA, Inc. (Securitas), as a defendant. On August 17, 2015, the court granted the plaintiff leave to file an amended complaint. There is no indication that Metro objected to the plaintiff's motion to amend the complaint. Count I of the first amended complaint was brought against Metro, and contained the same allegations of duty, liability, and damages as set forth in count I of the original complaint. The first amended complaint did not include a second count against Metro. Count II of the first

amended complaint was brought against Securitas. In count II, plaintiff alleged that Securitas had contracted with Metro to provide security services for Metro stations, including the area where the plaintiff was attacked; that by and through this contract, Securitas owed a duty to protect the plaintiff from criminal attack by third parties on Metro's premises; and that the failure of Securitas to have a security officer on the premises of the JJK Metrolink station on September 27, 2013, at approximately 7:15 p.m., constituted a breach of the duty owed to the plaintiff, resulting in plaintiff's injuries.

¶ 14 On September 2, 2015, Metro filed an answer to count I of the first amended complaint. Metro admitted that it was a quasi-governmental agency, but denied the allegations of duty, liability, and damages. Metro also alleged affirmative defenses directed toward comparative fault and the extent of plaintiff's injuries, but it did not include a claim that it was entitled to immunity under the Tort Immunity Act. On October 2, 2015, the plaintiff filed a response, denying all of Metro's affirmative defenses.

¶ 15 On October 8, 2015, Securitas filed its answer to count II of the first amended complaint. Securitas denied liability and asserted numerous affirmative defenses. On November 8, 2015, the plaintiff filed a response denying all of Securitas' affirmative defenses.

¶ 16 On January 25, 2016, Metro filed a motion seeking reconsideration of the court's order of July 12, 2015, denying its motion for summary judgment, and alternatively a finding under Illinois Supreme Court Rule 308 (eff. Jan. 1, 2015). Metro noted that the plaintiff's deposition was taken on November 10, 2015, and that the plaintiff testified that he was attacked while ascending the staircase from 25th Street to the Metro bus

turnaround. Metro also noted that the plaintiff was shown a photo of the 25th Street staircase during the deposition, and that the plaintiff marked an “X” on the photo, identifying the location of the attack. Metro appended portions of the plaintiff’s deposition and a copy of the photo to its motion. Metro acknowledged that section 2-101 of the Tort Immunity Act provides an exception to tort immunity if the public entity is a common carrier, but asserted that section 2-101 is not applicable when a plaintiff is not a passenger at the time of the injury. Metro argued that based on the location of the assault, the plaintiff was not in the act of boarding the train and thus was not a passenger within the scope of the passenger/carrier relationship.

¶ 17 Metro’s motion for reconsideration was called for hearing on February 17, 2016. After considering the pleadings and arguments of counsel, the court found it clear that Metro qualified as a local public entity, and that Metro was “not operating as a common carrier at the time because of where the attack on plaintiff occurred.” The court granted the motion to reconsider and entered summary judgment in favor of Metro on count I of the amended complaint.

¶ 18 On October 7, 2016, Securitas filed a motion for summary judgment. Securitas alleged that the plaintiff could not be deemed an intended beneficiary of the contract between Metro and Securitas because he was not a “passenger” of Metro at the time of the assault. The defendant attached a number of documents in support of its motion, including the trial court’s order granting summary judgment in favor of Metro, the affidavits of Kathy Brittin and Steven Devore, and pages from the deposition transcript of the plaintiff. Securitas also attached pages from the deposition testimony of Officer

Sherry Matthews, a Securitas security guard, the affidavit of Bob Worley, and portions of the contract between Securitas and Metro.

¶ 19 Bob Worley was a project manager and the designated corporate representative for Securitas. In his affidavit, Worley stated that Securitas contracted to provide security guards for the protection of “Metro’s customers and employees,” and for fare enforcement services on Metro trains and train platforms. Worley averred that under the contract, Securitas provided officers to serve as “platform security guards,” that the platform security guards were posted at Metro train station platforms as determined and directed by Metro, and that the platform security guards were posted solely for the protection of “Metro customers, including passengers, and Metro employees.” Worley stated that platform security officers had “no duty or obligation” to affirmatively offer security services to “non-customers of Metro.” Worley stated that under the contract with Metro, Securitas’ security officers split time patrolling both the JJK Metro station and the Washington Park Metro station, and that this was a “float” patrol. Worley averred that Officer Sherry Matthews was assigned to patrol both the JJK Metro and the Washington Park station on the evening that the plaintiff was attacked, and that Officer Matthews was patrolling the Washington Park station at the time the plaintiff was attacked. He further averred that if Officer Matthews had been at the JJK Metro Station, she would not have patrolled the area where the incident occurred, and she could not have seen the incident from the platform because that area was not in the line of sight of the Metrolink platform.

¶ 20 According to the contract between Securitas and Metro, Metro had standard operating procedures (SOP No. 12-33) for contracted security officers. SOP No. 12-33

provided that “[a] substantial part of the mission of the Metro Department of Public Safety is to provide a safe and secure environment for its customers and staff.” SOP No. 12-33 further provided that platform officers are responsible for the safety and security of the immediate area of the Metrolink station platform, and safe access to the platform and any adjacent parking lot or bus boarding area. The contract between Metro and Securitas included provisions for security guards to patrol on the trains and at various Metrolink stations, including the JJK Metro station. The contract further provided that the security officers would split time patrolling multiple Metrolink platforms in a “float” system. Those security officers who were assigned to “float” rode Metro trains between stations and patrolled the stops. Under Appendix B of the contract, security officers’ duties included vehicle and foot patrols, observing for trespassers, investigating unauthorized vehicles on Metro property, and inspection of designated patrol areas for unauthorized activities.

¶ 21 Sherry Matthews testified that she was the security officer who was on duty and was floating between the JJK station and another station on the night of the attack. She stated that she was patrolling the other station when the attack occurred. Matthews testified that her responsibilities included patrolling the platform, the station, and the bus turnaround at the JJK station. She stated that she would have intervened if she saw or heard someone being assaulted on the stairs where the plaintiff was attacked.

¶ 22 On November 22, 2016, the plaintiff filed a motion to reconsider the court’s decision to grant summary judgment for Metro. The plaintiff asserted that he was assaulted on a stairway leading to the JJK Metrolink platform and bus turnaround, and

that the location of the assault was approximately 120 feet from the Metrolink. The plaintiff also asserted that the stairway was owned and under the control of Metro and that it was designed for passengers of Metrolink as an integral part of the station. The plaintiff argued that under section 2-101 of the Tort Immunity Act, Metro was a common carrier and was not afforded immunity. The plaintiff offered his own affidavit in support of the motion to reconsider. The plaintiff averred that the location of the assault was approximately 120 feet from the platform, and that the stairway was designed for passengers and was an integral part of the station. The plaintiff also stated that he had a Metrolink pass and was going to take the Metrolink to travel home that evening.

¶ 23 Metro filed a motion in opposition to the plaintiff's motion to reconsider. Therein, Metro stated that the "prevailing issue" upon which the motion for summary judgment was based was "whether a common carrier/passenger relationship within the meaning of section 2-101 of the Illinois Tort Immunity Act exists if an individual sustains injury in a location that is not directly connected to an area that is designated for passengers that are boarding and or alighting from the mechanism of transportation." Metro again argued that based on the location of the assault, the plaintiff was not in the act of boarding the train and thus was not a passenger within the scope of the passenger/carrier relationship at the time of the attack.

¶ 24 On December 7, 2016, the plaintiff's motion to reconsider was called, heard, and taken under advisement. While the motion to reconsider was under advisement, the plaintiff filed a motion to dismiss count II of the first amended complaint because he had reached a settlement with Securitas. On January 10, 2017, the court entered orders

denying the plaintiff's motion to reconsider the summary judgment entered in favor of Metro, and granting the plaintiff's motion to dismiss his claim against Securitas.

¶ 25 On appeal, the plaintiff contends that the trial court erred in entering summary judgment in favor of Metro on count I of the first amended complaint. The plaintiff claims that under section 2-101 of the Tort Immunity Act (745 ILCS 10/2-101 (West 2014)), Metro is not afforded immunity because it was a common carrier engaged in the operations of a public transit system at the time of the attack.

¶ 26 Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits, when viewed in a light most favorable to the nonmoving party, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014); *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 228, 864 N.E.2d 176, 185 (2007). The circuit court's decision to grant summary judgment is reviewed *de novo*. *Murray*, 224 Ill. 2d at 228.

¶ 27 The Tort Immunity Act serves to protect local public entities and public employees from liability arising from the operations of government. 745 ILCS 10/1-101.1(a) (West 2014); *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 368, 799 N.E.2d 273, 279 (2003). In enacting this law, the legislature adopted the general principle that local governmental units are liable in tort, but limited this liability with an extensive list of immunities based on specific government functions. *Barnett v. Zion Park District*, 171 Ill. 2d 378, 386, 665 N.E.2d 808, 812 (1996). The Tort Immunity Act does not create new duties on a governmental entity; but rather, codifies the duties that existed at common law, to which the subsequently delineated immunities apply. *Barnett*, 171 Ill. 2d

at 386. The existence of a duty and the existence of an immunity are separate issues. *Barnett*, 171 Ill. 2d at 388. Unless an immunity provision applies, a local public entity is liable in tort to the same extent as a private party. *Barnett*, 171 Ill. 2d at 386. The immunities established in the Tort Immunity Act are affirmative matters, and so governmental entities bear the burden of proving their immunity under the Tort Immunity Act. *Van Meter*, 207 Ill. 2d at 370. Because the Tort Immunity Act was enacted in derogation of the common law, it must be strictly construed. *Van Meter*, 207 Ill. 2d at 368.

¶ 28 It is undisputed that Metro is a local public entity as set forth in section 1-206 of the Tort Immunity Act (745 ILCS 10/1-206 (West 2014)). But as noted above, a local public entity is liable in tort to the same extent as a private party unless it establishes that an immunity provision in the Tort Immunity Act applies. *Barnett*, 171 Ill. 2d at 386. In this case, under count I of the first amended complaint, the plaintiff alleged that Metro was a governmental entity which operated a business that undertook to transport members of the public; that Metro owned and operated the JJK Metrolink station; that Metro had knowledge of previous criminal attacks on its premises by third parties against individual customers attempting to use its transportation services; and that Metro breached its duty to protect the plaintiff, while he was on the premises of Metro's JJK Metrolink station, from a reasonable foreseeable unlawful act by a third party. The plaintiff contends that Metro is not afforded immunity under section 2-101 of the Tort Immunity Act because it was operating as a common carrier at the time of the attack. Metro claims that the trial court correctly concluded that Metro was not operating as a

common carrier at the time of the assault because the plaintiff was not on or preparing to board the train, and thus not a passenger at the time he was attacked.

¶ 29 Section 2-101 of the Tort Immunity Act provides that nothing in this Act affects a local public entity's liability based on its operation as a common carrier. 745 ILCS 10/2-101 (West 2014). Thus, section 2-101 of the Act preserves the standard of care to which a common carrier must adhere to avoid liability. Under Illinois law, a common carrier owes its passengers the highest degree of care consistent with mode of conveyance and the practical operation of its business. *Katamay v. Chicago Transit Authority*, 53 Ill. 2d 27, 29-30, 289 N.E.2d 623, 625 (1972); *Skelton v. Chicago Transit Authority*, 214 Ill. App. 3d 554, 572, 573 N.E.2d 1315, 1327 (1991). The common carrier also owes a duty to exercise ordinary care to provide reasonably safe depots, platforms, and approaches for the use by passengers, and to provide for the protection of business invitees while within or upon the premises from the dangers of criminal acts of which it knew, or should have anticipated, from the facts and circumstances known to it. *Neering v. Illinois Central R.R. Co.*, 383 Ill. 366, 50 N.E.2d 497 (1943); *Haynes v. Chicago Transit Authority*, 59 Ill. App. 3d 997, 376 N.E.2d 680 (1978); Illinois Pattern Jury Instructions, Civil, No. 100.12 (2011). The rationale for the imposition of a duty upon a carrier to exercise the highest degree of care for the safety of a passengers, as distinguished from the lesser duty owed at all other times, is that the degree of care should be commensurate with the danger to which the individual is subjected and the requisite degree of care to be exercised increases as the risk of danger increases. *Katamay*, 53 Ill. 2d at 29-30. Consequently, under the common law, a common carrier

owed a duty of care to both passengers and invitees, and the differing degrees of care were based on the risk of danger. Thus, a common carrier is held to the higher degree of care in operating and maintaining its engines, cars, platforms, and tracks, and a lesser degree of care to operating and maintaining its premises, depots, and facilities. However, each of these activities involved operations of the common carrier.

¶ 30 In this case, the plaintiff has alleged that at the time he was assaulted, he was a customer of Metro, a business invitee who was on Metro's premises for purposes of using public transportation services provided by Metro. According to the undisputed evidence in the record, the plaintiff was ascending a stairway owned and controlled by Metro at the time of the attack. There is also evidence that customers, including passengers, used this stairway, with actual or implied consent of Metro, to reach and board the Metrolink platform and the Metro bus stop. There is a dispute about how far the site of the attack was from the Metrolink platform. The plaintiff stated the area of the attack was approximately 120 feet from the Metrolink platform, while Metro stated that the distance was approximately 100 yards. There is evidence that Metro intended to provide security to protect both its passengers and invitees. According to the Worley affidavit, the platform security guards were posted to protect Metro's customers, passengers, and staff. Provisions in Metro's SOP No. 12-33 demonstrate that Metro had a mission to provide a safe and secure environment for customers and staff, and that platform security officers were responsible for the safety and security of the Metrolink platform, and safe access to the platform and any adjacent parking lot or bus boarding area. Provisions in Metro's contract with Securitas indicated that the duties of security officers included vehicle and

foot patrols, observing for trespassers, and inspecting designated patrol areas for unauthorized activities. Officer Matthews testified that she would have patrolled Metro's bus turnaround as well as the platform. These activities were part of Metro's operations as a common carrier. In our view, Metro was operating as a common carrier and owed a duty of ordinary care to protect its passengers, as well as its business customers and invitees, who were within or upon the premises of its station, from the danger of assault of which it knew, or should have anticipated from the facts and circumstances known to it. See *Neering v. Illinois Central R.R. Co.*, 383 Ill. 366, 50 N.E.2d 497 (1943); *Hopkinson v. Chicago Transit Authority*, 211 Ill. App. 3d 825, 570 N.E.2d 716 (1991). Under the plain language of 2-101 of the Tort Immunity Act, Metro is not afforded immunity as it was carrying out operations as a common carrier at the time of the attack.

¶ 31 Metro has argued that *Del Real v. Northeast Illinois Regional Commuter R.R. Corp.*, 404 Ill. App. 3d 65, 934 N.E.2d 574 (2010), is analogous to this case, and supports the trial court's decision to enter summary judgment. We do not agree. In *Del Real*, the plaintiff injured her back when she slipped while attempting to climb up onto a train platform at a location that did not have a staircase. The plaintiff alleged that she was a passenger because she had a pass and was attempting to climb up onto the north end of the train platform with the intention of boarding when she fell. *Del Real*, 404 Ill. App. 3d at 72. The plaintiff did not assert that she was an invitee at the time of the incident. The court found that the carrier had made a policy decision not to place a staircase at the north end of the train platform, and that the plaintiff had trespassed the area between the platform and a public crossing in an attempt to gain access to the platform. The court

found that the plaintiff had not become a passenger at the time of her injury because she was not in the proper place to be transported and the carrier had not accepted her for transport. *Del Real*, 404 Ill. App. 3d at 71-72. Under the facts in *Del Real*, the plaintiff could not establish that she was a passenger or an invitee at the time she was injured. See *Del Real*, 404 Ill. App. 3d at 72-73. In the case before us, unlike *Del Real*, there is evidence that the plaintiff was ascending a stairway that was owned and controlled by Metro in order to catch a train home, that the stairway was a part of Metro's JJK station, and that the stairway provided customers and invitees with access to Metro's train platform, bus turnaround, and bus stop.

¶ 32 After reviewing the record, including the pleadings, depositions, and affidavits, we find that Metro was operating as a common carrier at the time of the assault on the plaintiff. Thus, under section 2-101 of the Tort Immunity Act, Metro was not entitled to immunity from potential liability. Accordingly, we find that the trial court erred in entering summary judgment in favor of Metro on count I of the first amended complaint. The summary judgment is hereby vacated, and the cause is remanded to the circuit court for further proceedings.

¶ 33 Summary judgment vacated; cause remanded.