2019 IL App (1st) 181184-U

FIRST DISTRICT
SECOND DIVISION
May 7, 2019

No. 1-18-1184

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DANTE WEBB,	)	Appeal from the Circuit
	)	Court of Cook County
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16 L 01405
	)	
THE CITY OF CHICAGO, a municipal corporation,	)	Honorable
	)	William Gomolinski,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justice Pucinski and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment properly granted because no duty of care was owed to a pedestrian who was not an intended user of an alley.

¶ 2 In this slip and fall case, plaintiff Dante Webb appeals the trial court's grant of summary judgment in favor of defendant the City of Chicago. On appeal, Webb claims that he was an intended and permitted user of the City's alley where he fell, and that he fell on an unnatural accumulation of ice. Because the trial court properly concluded as a matter of law that Webb was not an intended user of the alley, we affirm.

¶ 3 BACKGROUND

¶ 4 At about 7 a.m. on February 12, 2015, Webb left his apartment located in a complex at

6136 South Kimbark Avenue in Chicago, Illinois. Webb walked through a rear gate that led to an alley behind the complex. Webb walked south through the alley toward his car parked in a lot located at the corner of South Kimbark Avenue and East 62nd Street. The lot abutted the alley on the west side and Webb's apartment complex on the north, and was accessible from the sidewalk in front of Webb's apartment complex that continued along the east and south perimeter of the lot. Webb had parked in the same lot numerous times, and he would walk about 25 to 30 feet through the alley to and from his apartment. The alley had speed bumps, and there were garbage dumpsters for residents to use to dispose of their garbage.

¶ 5 It had snowed lightly the day before, and the alley was covered with ice that was about 2 inches thick**.** As Webb walked south through the alley, he slipped and fell on ice that was between speed bumps, breaking his leg and dislocating his ankle. The alley's surface was all ice and uneven with ruts. Webb claimed that the unevenness of the ice in the alley was caused by various garbage trucks, both belonging to the City and to private refuse companies, which drove through the alley, packing down the snow and ice.

¶ 6 Alleys are City property, and the City's policy is not to plow alleys. In fact, if a resident called the City to ask for snow removal of an alley, the City would respond that the City does not provide such service.

¶ 7 At the time of his injury, Webb did not know who owned the lot where he parked his car, but thought that it may have been owned by a church because a church bus was parked there and a church was located directly across the alley from the lot. Webb also did not know if parking in the lot was legal. But less than a month after Webb's injury, the City put up a fence around the entire lot, prohibiting access to the lot.

¶ 8 On February 10, 2016, Webb filed a complaint alleging negligence against the City for, among other things, failing to maintain the alley in a reasonably safe condition. The City moved

for summary judgment, asserting that section 3-102(a) of the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/3-102(a) (West 2014)) shielded it from liability for Webb's injuries because he was not an intended and permitted user of the alley. The trial court granted the City's motion for summary judgment, and Webb timely appealed.

¶ 9 ANALYSIS

¶ 10 Webb claims that the trial court erred in granting summary judgment in favor of the City, arguing that there was a genuine question of material fact as to whether he was an intended user of the alley where he slipped and fell.

¶ 11 Summary judgment should be granted "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 judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014); *Monson v. City of Danville*, 2018 IL 122486, ¶ 12. When deciding a motion for summary judgment, a trial court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the nonmovant. *Id*. Summary judgment should not be granted "where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Id*. We review the trial court's grant of summary judgment *de novo*. *Id*.

¶ 12 To prevail on a negligence claim, a plaintiff must prove that the defendant owed a duty of care to the plaintiff, the defendant breached that duty of care, and the plaintiff suffered an injury proximately caused by the breach. *Id*. ¶ 23. The existence of a duty is a question of law, and absent a legal duty, no recovery by the plaintiff is possible as a matter of law and, therefore, summary judgment in the defendant's favor is proper. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 13; see *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22 (the plaintiff

cannot recover if the defendant did not owe a duty). Section 3-102(a) codifies a municipality's duty at common law to maintain its property in a reasonably safe condition. *Monson*, 2018 IL 122486, ¶ 9. Section 3-102 (a) states:

> "(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 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." (Emphasis added.) 745 ILCS 10/3-102(a) (West 2014).

¶ 13 Section 3-102(a) expressly limits a municipality's duty of care to permitted and intended uses. *Washington v. City of Chicago*, 188 Ill. 2d 235, 240 (1999); *Vaughan v. City of West Frankfort*, 166 Ill. 2d 155, 160 (1994). In other words, to recover against a municipality under a negligence theory, a plaintiff must demonstrate that he or she was both an intended and permitted user of the property. *Vaughn*, 166 Ill. 2d at 160; see *Boub v. Township of Wayne*, 183 Ill. 2d 520, 524 (1998) (a permitted user of municipal property is not necessarily an intended user). Whether a particular use of property was permitted and intended is determined by examining the nature of the property itself, and the intent of the municipality, not the intent of the user, is controlling. *Vaughn*, 166 Ill. 2d at 163; *Latimer v. Chicago Park District*, 323 Ill. App. 3d 466, 468 (2001).

¶ 14 The City claims that it owed no duty to Webb because although he was a permitted user of the alley, he was not an intended user. We agree.

¶ 15 The issue of whether a pedestrian is an intended user of an alley was addressed by this court in *Khalil v. City of Chicago*, 283 Ill. App. 3d 161 (1996). In *Khalil*, a pedestrian walked from his parked vehicle through an alley toward a restaurant when he tripped and fell over a hole in the alley, sustaining injuries. *Id*. at 162. The pedestrian brought a negligence action against the City for failing to properly maintain the alley. *Id*. The City moved for summary judgment, arguing that the pedestrian was not an intended user of the alley. *Id*. This court agreed with the City, finding that an alley was a roadway intended to be used by vehicles, not pedestrians. *Id*. at 164. This court further explained that there were no physical manifestations, such as signs or pavement markings, demonstrating that the City intended pedestrians to walk through the alley, and the City had no duty to pedestrians using the alley as if it was a designated walkway or sidewalk. *Id*. We find no basis to depart from the general rule articulated in *Khalil* that pedestrians are not intended users of an alley.

¶ 16 Webb argues that the Chicago Municipal Code (Code), and not *Khalil*, is controlling. Webb relies the Code's definitions of alley and roadway, arguing that because those terms are defined differently, the intended use must also be different. The Code defines "alley" as a "public way intended to give access to the rear or side of lots or buildings and not intended for the purpose of through vehicle traffic." Chicago Municipal Code § 9-4-10 (added June 17, 1992). And the Code defines "roadway" as "that portion of a public way between the regularly established curb lines, or that part improved, and intended to be used for vehicular travel." *Id*. The Code's definition of alley imposes a limitation on vehicle use of an alley (no through vehicle traffic), and no such limitation is imposed on a roadway. But nothing in the Code's definitions manifests the City's intent that pedestrians are the intended users of either an alley or a roadway. Thus, the Code's definitions provide no reason to depart from our holding in *Khalil*.

¶ 17 Webb claims that even if the alley was a roadway not intended for pedestrian use, his use of the alley fell within the recognized exception that pedestrians exiting and entering their vehicles are intended and permitted users of streets and alleys. But that narrow exception only applies in the limited situation where a pedestrian is in the immediate area surrounding a legally parked vehicle from which the pedestrian entered or exited. See *Curatola v. Village of Niles*, 154 Ill. 2d 201, 215 (1993) (pedestrian use of the street was mandated to enter and exit a legally parked vehicle). Nothing in the record establishes that Webb fell in the immediate area of his vehicle or that he fell when he was entering or exiting his vehicle. To the contrary, Webb's vehicle was parked in the lot at the end of the alley, approximately 25 to 30 feet away from his apartment. And there was no evidence in the record establishing that Webb's vehicle was legally parked in the lot or that there were any physical manifestations permitting pedestrian use of the alley, *i.e.*, crosswalk markings or placement of signs. See *Ramirez v. City of Chicago*, 2019 IL App (1st) 180841, ¶ 16 (no duty owed to an individual exiting an illegally parked vehicle). Moreover, there was a sidewalk in front of Webb's apartment complex that extended to the lot, demonstrating the City's intent that pedestrians would walk in front of the complex on the sidewalk and not behind the complex through the alley. See *Gutstein v. City of Evanston*, 402 Ill. App. 3d 610, 617 (2010) (pedestrians are not intended users of a roadway when a legal alternative exists, such as a crosswalk, in order to access a vehicle).

¶ 18 Under the facts of this case, we find no basis to extend the exception applicable to a pedestrian's use of the roadway immediately around his or her legally parked vehicle for the purpose of entering and exiting the vehicle to encompass the alley extending between the rear gate of Webb's apartment and the lot about 25 to 30 feet away where he parked his vehicle, even assuming it was foreseeable that Webb would walk through the alley to reach his vehicle. *Harden v. City of Chicago*, 2013 IL App (1st) 120846, ¶ 30 (foreseeability of use does not

change the municipality's intended use); see also *Gutstein*, 402 Ill. App. 3d at 620 (pedestrians are intended users of an alley only to access garbage dumpsters to throw out trash).

¶ 19 In sum, the City did not owe Webb a duty under section 3-102(a) because Webb failed to demonstrate that the City intended him to use the alley to walk to his vehicle parked in the lot. Absent a duty owed to Webb by the City, Webb cannot recover on his negligence action. And because the City did not owe Webb a duty, we need not address Webb's claim that he fell on an unnatural accumulation of ice in the alley. See *Dunet v. Simmons*, 2013 IL App (1st) 120603, ¶ 32 (the issue of proximate cause need not be reached when a plaintiff failed to establish that a duty was owed); *Kiel v. City of Girard*, 274 Ill. App. 3d 821, 825 (1995) (a municipality may be liable for unnatural accumulations of ice and snow provided the municipality has violated its duty to exercise ordinary care). Consequently, the trial court properly granted summary judgment in the City's favor.

¶ 20 Affirmed.