No. 2—10—0094
Order filed Apri 29, 2011



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| LEVONNE VLODEK, | ) | Appeal from the Circuit Court |
| | ) | of Du Page County. |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | No. 08—L—245 |
| | ) | |
| VILLAGE OF WESTMONT, | ) | Honorable |
| | ) | Dorothy F. French, |
| Defendant-Appellee. | ) | Judge, Presiding. |

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JUSTICE BURKE DELIVERED the judgment of the court.
Chief Justice Jorgensen and Justice Bowman concurred in the judgment.

**ORDER**

*Held*: Defendant is statutorily immune from plaintiff's cause of action for negligence based on the facts. Accordingly, the trial court properly granted defendant's summary judgment motion.

Plaintiff, Levonne Vlodek, was struck and injured by a car as she crossed a midblock, pedestrian crosswalk on Cass Avenue in Westmont, Illinois. Plaintiff filed a two-count complaint against defendant, the Village of Westmont, alleging breach of contract (count I) and negligence in connection with the installation of the crosswalk (count II). The trial court granted defendant's motion for summary judgment (see 735 ILCS 5/2—1005 (West 2008)), finding defendant immune from liability based upon sections 2—201, 3—102, and 3—104 of the Local Governmental and

Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/2—201, 3—102, 3—104 (West 2008)). Plaintiff appeals only the dismissal of count II. We affirm.

FACTS

Defendant raises objections to several parts of plaintiff's statement of facts. We have reviewed the objections and will disregard any facts not based on the record.

Sometime in 2006, defendant made the decision to install a midblock crosswalk on Cass Avenue. Stephen May, defendant's engineer, designed the crosswalk. He made the decision as to how to physically construct the crosswalk, where it should be placed, and where to place the lines and the signs.

On March 9, 2007, plaintiff and her friend, Sophie Boritz, attended a fish fry at the Knights of Columbus. The Knights of Columbus is located in downtown Westmont on the east side of Cass Avenue, not far from the midblock, pedestrian crosswalk. Boritz drove to the fish fry and parked her car north of the midblock crosswalk on the west side of Cass Avenue, across the street from the Knights of Columbus.

After plaintiff and Boritz left the fish fry, they started walking north to the stop light, but Boritz saw the midblock crosswalk and told plaintiff to "come this way." Boritz was in front of plaintiff when they started crossing from the east to the west in the striped portion of the cross walk. Prior to entering the crosswalk, plaintiff looked to her left. Cars were parked close to the crosswalk on either side of Cass Avenue, which allegedly blocked plaintiff's view of vehicles driving northbound on Cass Avenue and obstructed the view of Maureen M. McLaughlin, the driver who hit plaintiff as she crossed the street. Plaintiff alleged that she was eight feet into the crosswalk

before McLaughlin was able to see plaintiff. McLaughlin was unable to see plaintiff because of the parked cars until she was approximately 20 to 25 feet from plaintiff.

Plaintiff suffered bruising, a cut, and a broken femur, for which she had surgery. Plaintiff still suffers pain in her hip and now uses a cane or a walker. Her medical bills totaled close to $70,000. At the time of the accident, plaintiff was 83 years old.

Plaintiff sued defendant alleging, *inter alia*, that they were negligent in connection with the installation of the crosswalk. Specifically, plaintiff claimed defendant was negligent in the following ways:

"i. [Defendant] failed to perform an engineering study for a determination to use crosswalk lines at a location away from highway traffic signals of STOP signs in accordance with the State of Illinois November 2004 and Federal November 2003 editions of the Manual on Uniform Traffic Control Devices for Streets and Highways [MUTCD] for all streets and highways open to public travel.

ii. [Defendant] failed to place an advance pedestrian crossing warning sign for northbound drivers on Cass Avenue approaching the midblock crosswalk in accordance with guidance of the MUTCD.

iii. [Defendant] failed to follow the provisions of FHWA—RD—01—02 'Pedestrian Facility Users Guide: Providing Safety and Mobility,' March 2002, Pedestrian Facility Design, 12 Raised Median and 19 Curb Extension that 'midblock extensions provide an opportunity to enhance midblock crossings.'

iv. [Defendant] failed to place a median pedestrian refuge island on centerline of Cass Avenue for the midblock pedestrian crossing north of Burlington Avenue. The width

of Cass Avenue for traffic at the midblock pedestrian crossing is 27 feet which is adequate to place a 3 foot wide pedestrian refuge island leaving 12 foot wide lanes.

v. [Defendant] failed to complete an engineering study for the determination to use crosswalk lines to provide adequate clear sight distance of pedestrians entering the midblock crosswalk across Cass Avenue north of Burlington Avenue for northbound drivers free of the obstructions of parked vehicles in accordance with guidance of the MUTCD and per the Institute of Transportation Engineers Recommended Practice 'Design and Safety of Pedestrian Facilities.'

vi. Despite the fact that the accident occurred after dark and while it was raining, [defendant] failed to maintain the working order of the street lights at the time of the accident.

vii. [Defendant] installed a crosswalk which was unsafe because it allowed parked vehicles to obstruct a driver's view of a person, like Plaintiff, in or entering the crosswalk.

viii. [Defendant] failed to receive written approval from the County Superintendent of Highways prior to the installation of the crosswalk."

Defendant filed a response, alleging it was immune from a negligence suit based upon three sections of the Act. In particular, defendant argued that the design of the crosswalk was determined by May based upon his engineering judgment and thus, was the type of discretionary act which provided defendant immunity under section 2—201. 745 ILCS 10/2—201 (West 2008). Defendant argued that plaintiff failed to establish whether defendant had actual or constructive notice of defendant's failure to maintain a street light in working order in the area of the crosswalk, and the

failure to do so would not waive immunity under section 3—102. 745 ILCS 10/3—102 (West 2008). Defendant further argued it was immune from suit for an injury caused by the failure to provide a warning sign as provided by section 3—104. 745 ILCS 10/3—104 (West 2008). Defendant subsequently filed a summary judgment motion raising the allegations set forth above, except for the argument regarding section 3—104.

May, who was a licensed professional engineer in the State of Illinois and the director of public works for defendant, stated in his deposition that he designed the crosswalk on Cass Avenue based upon his own judgment as a licensed professional engineer. May made the decision as to the placement of the signs and the lines for the crosswalk based upon his engineering judgment. In designing the crosswalk along Cass Avenue, May accounted for the features of each parkway, the crosswalk location, and the lighting in the area. May did not perform an engineering study on the crosswalk because, in his engineering judgment, it was not required. In his engineering judgment, it was not a requirement to place advance warning signs prior to the crosswalk. May opined that there was no concern about the sight distance when a person is standing at the crosswalk. When the crosswalk was installed, the pavement markings were made at his direction. May looked at the maintenance records and could not find any record of a reported problem with the lights along on the block of Cass Avenue where the crosswalk was located.

Plaintiff's engineering expert, Fred Ranck, testified that he would have designed things differently, but neither May nor defendant violated any regulations or laws in planning the design or placement of the crosswalk. Ranck stated that the guidance provisions set forth in the MUTCD are recommended, but they are not mandatory; a guidance statement in the MUTCD can be modified

or not followed based upon engineering judgment or an engineering study. Ranck stated that there is no law mandating the use of advanced placement warning signs.

The trial court granted defendant's motion for summary judgment, and it dismissed counts I and II. Plaintiff timely filed a notice of appeal, only appealing the dismissal of count II. Before this court, plaintiff argues that the trial court's determination of the law was "flawed."

ANALYSIS

1. Standard of Review

The parties dispute whether the trial court properly granted defendant's motion for summary judgment pursuant to section 2—1005 of the Code of Civil Procedure (Code) (735 ILCS 5/2—1005 (West 2008)), on the basis that three sections of the Act immunizes defendant from liability for the acts and omissions alleged in count II of plaintiff's complaint.

In accordance with section 2—1005 of the Code, summary judgment is proper where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, reveal there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2—1005 (West 2008); *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper. *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). We review *de novo* a trial court's decision to grant a summary judgment motion. *Governmental Interinsurance Exchange v. Judge*, 221 Ill. 2d 195, 215 (2006).

2. Immunity under the Act

The Act 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 governmental functions.

Therefore, a governmental unit is liable in tort on the same basis as a private tortfeasor unless a valid statute dealing with tort immunity provides an exception, or a condition, to that liability. See *Barnett v. Zion Park District*, 171 Ill. 2d 378, 385-86 (1996). Further, the Act codifies the common law duty of a local governmental unit "to exercise ordinary care to maintain its property in a reasonably safe condition." 745 ILCS 10/3—102(a) (West 2008). This section does not create any new duties; the Act delineates immunities and defenses in subsequent sections. *Wagner v. City of Chicago*, 166 Ill. 2d 144, 152-53 (1995). Applying sections 2—201, 3—102, and 3—104 of the Act to the allegations pleaded in count II of the underlying complaint, it is clear that defendant is immunized from liability.

a. Immunity under Section 2—201

Plaintiff's complaint alleges, in part, that defendant: (1) failed to perform an engineering study for a determination to use crosswalk lines; (2) failed to follow the provisions of the "pedestrian Facility Design" and "Curb Extension;" (3) failed to place a median pedestrian refuge island on the centerline of Cass Avenue of the midblock pedestrian crossing; (4) failed to complete an engineering study for the determination to use crosswalk lines to provide adequate clear sight distance of pedestrians entering the crosswalk in accordance with the guidance of the MUTCD; (5) installed an unsafe crosswalk by allowing parked vehicles to obstruct a driver's view; and (6) failed to receive written approval from the county superintendent of highways prior to the installation of the crosswalk.

Section 2—201 extends the most significant protection afforded to public employees under the Act. *Van Meter v. Darien Park District,* 207 Ill. 2d 359, 370 (2003), citing D. Baum, *Tort Liability of Local Governments and Their Employees: An Introduction to* the *Illinois Immunity Act*, 1966 U. Ill. L.F. 981, 994. Section 2—201 together with section 2—109 (745 ILCS 10/2—109

(West 2008) ("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")), provides both public employees and the public employer with immunity against allegations that challenge discretionary policy determinations. *Arteman v. Clinton Community Unit School District No. 15*, 198 Ill. 2d 475, 487 (2002). Section 2—201 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 2008).

Before immunity applies under section 2—201 of the Act, a public entity must prove that its act or omission is both an exercise of discretion and a policy determination. 745 ILCS 10/2—201 (West 2008). *Harinek v. 161 North Clark Street Ltd. Partnership*, 181 Ill. 2d 335, 341 (1998). Whether the act or omission in question is discretionary or ministerial must be determined on a case-by-case basis. *Snyder v. Curran Township*, 167 Ill.2d 466, 474 (1995). Therefore, we must ascertain whether May determined policy and exercised discretion in the placement and design of the crosswalk. See *Harinek*, 181 Ill. 2d at 341.

Acts deemed "discretionary" are defined as those that are unique to a particular public office *(Snyder*, 167 Ill. 2d at 474), and involve the exercise of personal deliberation and judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed. *D.M. v. National School Bus Service, Inc.*, 305 Ill. App. 3d 735, 739 (1999).

The term "policy" when used in relation to the decisions of a public entity have been defined as " 'those decisions which require the municipality to balance competing interests and to make a

judgment call as to what solution will best serve each of those interests.' " *Harinek*, 181 Ill. 2d at 342, quoting *West v. Kirkham*, 147 Ill. 2d 1, 11 (1992); see also *Harrison v. Hardin County Community Unit School district No. 1*, 313 Ill. App. 3d 702, 706 (2000) ("policy determination" is one requiring "considered evaluation and judgment by a governmental unit, utilizing its own particular expertise, to formulate principles and procedures directed toward the achievement of common and general goals for the community's benefit" during which "several factors, including the public benefit, the practicability of the plan or procedure, and the best methods to be employed considering available resources, costs, and safety must be considered").

We find *Wrobel v. City of Chicago,* 318 Ill. App. 3d 390 (2000), instructive. In *Wrobel*, the plaintiffs alleged that they suffered injuries resulting from the defendant municipality's negligent repair of a pothole. *Wrobel*, 318 Ill. App. 3d at 391. The record in *Wrobel* disclosed how the work was done. The appellate court affirmed the trial court's grant of summary judgment in favor of the defendant on the ground that the defendant was entitled to discretionary immunity under section 2—201, explaining:

> "These workers are directed by [their foreman] to remove 'as much' loose asphalt and existing moisture in a pothole 'as possible' before applying the cold mixture. While they are obligated to undertake such measure pursuant to the express directive of their foreman, the workers enjoy discretion in determining how much asphalt and moisture should be actually extracted and whether that amount is indeed adequate to ensure a durable patch.
>
> The decisions of the workers in this regard can also fairly be characterized as policy determinations. When confronted with a particular stretch of roadway, the workers must necessarily be concerned with the efficiency in which they prepare any potholes for repair.

> Specifically, the workers must allocate their time and resources among the various potholes that will be repaired, and they must ensure that not too much time is dedicated to pothole preparation. The more time and resources the workers devote to preparing potholes for a patch, the less time and resources they have available to repair the other potholes existing throughout their daily grid.
>
> For the same reasons discussed above, the extent of the worker's removal efforts represent both a determination of policy and an exercise of discretion. The degree to which a pothole should be prepared, and specifically how much loose asphalt and moisture will be removed, is a matter of a worker's personal judgment, and encompassed within that judgment are the policy considerations of time and resource allocation during a given workday." *Wrobel*, 318 Ill. App. 3d at 395.

Similar to *Wrobel*, May was obligated to take such measures to install the crosswalk pursuant to the directive of the Village and the Village Manager. May enjoyed discretion in determining the design of the crosswalk, its placement, lighting, and signage. In fact, the facts show May's placement and design of the crosswalk involved a much more "complex, location-specific determination" than was in question in *Wrobel*. See *Gutstein v. City of Evanston*, 402 Ill. App. 3d 610, 627 (2010) (where the city presented no facts at trial to suggest that the regrading process involved the sort of complex, location-specific determinations presented in *Wrobel).*

May's decisions can also be characterized as policy determinations. He had to weigh the safest and most efficient manner regarding where to place the crosswalk, how it should be designed, and whether lighting and signage should be used. This process necessarily involves such policy

considerations of budget constraints and public safety, which May as the director of public works for defendant must balance and weigh when making his determinations.

Plaintiff maintains that May did not have discretion because he did not have the authority to install the crosswalk; it was the decision of the Village Board and Manager. The determination of the initial decision to install the midblock crosswalk is not the grounds alleged in plaintiff's complaint. Rather, plaintiff challenges the method of its installation. Moreover, while May was obligated to undertake the construction of the crosswalk on the particular block of Cass Avenue pursuant to the express directive of the Village, the extent of his efforts represented both a determination of policy and discretion. May's position as the Village's engineer involved his personal judgment in ascertaining the crosswalk placement, its dimensions, the materials to use, whether to install lighting, and signage, and encompassed within that judgment was a host of competing interests, among them, safety and cost.

Plaintiff relies on *Harinek* to show that the fire marshal in that case was in a position involving the exercise of discretion because he bore "sole and final responsibility for planning and executing fire drills in buildings throughout Chicago" (*Harinek*, 181 Ill. 2d at 343), whereas May did not have such authority. We disagree with this distinction. Like the fire marshal in *Harinek*, May was in a position involving the exercise of discretion because May did bear the sole and final responsibility for planning crosswalks throughout the Village. The only person above May in the relevant "chain of command" was the Village Manager, but May's responsibility for planning the crosswalk was not subject to the Village Manager's approval. See *Van Meter*, 207 Ill. 2d at 392

(Garman, J., dissenting, joined by Fitzgerald, J.) ("The higher the official stood in the relevant chain of command, the more likely it is that he acted with discretion for the purposes of section 2—201").

Plaintiff next argues that defendant cannot be protected by immunity as May's installation of the non-intersection pedestrian crosswalk was subject to mandatory compliance with section 11—304 of the Illinois Vehicle Code (625 ILCS 5/11—304 (West 2008) (providing that local authorities must follow the MUTCD)), and therefore such acts were ministerial and not discretionary.

Plaintiff, relies on *Snyder*, which held that, where tailored statutory and regulatory guidelines place certain constraints on the decision of an official, it makes those duties ministerial in nature. *Snyder*, 167 Ill. 2d at 474. See also *Koltes v. St. Charles Park District*, 293 Ill. App. 3d 171, 176 (1997). Plaintiff notes that the existence of the statutory and regulatory guidelines "speaks purposefully to the construction of non-intersection pedestrian crosswalks" and before May could reject the relevant provisions of the MUTCD, he was required to make an engineering judgment and complete an engineering study that indicated that a deviation from the MUTCD was appropriate.

Plaintiff contends that, because May completed no engineering study, made no reference to the MUTCD, and completely failed to even consider these, May breached his duty of reasonable care and, at the very least, this raises a question of material fact. Plaintiff maintains that immunity from liability for injury caused by an alleged "discretionary" decision requires proof of a conscious decision and May did not exercise discretion because he did not consider, one way or the other, the requirements of the MUTCD.

Plaintiff's arguments are problematic for several reasons. First, there are no laws or mandatory requirements that May failed to follow in the placement and design of the crosswalk. The

MUTCD defines "guidance" as "a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. *** The verb should is typically used." The provision in the MUTCD that an engineering study, warning signs, and visibility of non-intersection pedestrian crossings "should" be used are considered as "guidance," and thus, are not mandatory. Where no statutory or regulatory guidelines place constraints on an official's decisions, those decisions cannot be considered ministerial in nature. See *Greeson v. Mackinaw Township*, 207 Ill. App. 3d 193, 202 (1990) (highway commissioner's decision to place the "S" curve warning sign was an exercise of his official discretion, as it required personal judgment).

The cases relied upon by plaintiff are factually distinguishable. In *Snyder*, there was no latitude in the language of the MUTCD for discretion in the placement of a road sign, and thus, discretionary immunity did not apply. *Snyder*, 167 Ill. 2d at 472. In *Anderson v. Alberto-Culver USA, Inc.*, 317 Ill. App. 3d 1104 (2000), the federal regulations applicable to a municipally-owned airport mandated the area be kept free from potentially hazardous ruts, humps, depressions, or other surface variations. *Anderson*, 317 Ill. App. 3d at 1114-15. In *Koltes*, the plaintiff failed to cite any law, statute, or regulation imposing a duty upon the park district to provide fencing or warnings for the area in question, and the plaintiff failed to show a prescribed method to be followed during the design or construction of the golf course. As the defendant's actions could not be performed in a prescribed manner, they could not be classified as a ministerial function. *Koltes*, 293 Ill. App. 3d at 177.

Second, while May stated that he did not consider the MUTCD when he designed the crosswalk, plaintiff omits the remainder of May's answer, in which he stated that he did not consider

the MUTCD because he was "already familiar with it." May explained: "I'm familiar with the information within [the MUTCD], have used it all along, [and I] do not go back and reference the manual every time I paint a line." When asked why an engineering study was not performed in accordance with the MUTCD, May responded that a study was not required because the determination to install the crosswalk was already made by the Village. May also noted that all of the sections in the MUTCD which plaintiff referred to, including marked crosswalks and conducting an engineering study, were under the "guidance" category and "[y]ou can't disregard the fact that it is under guidance because the definition of what falls under guidance already makes it variable. So it is not a requirement at all in the first place." May further remarked that "it was up to me to make the best fit."

Third, even plaintiff's expert agreed that May would have discretion as to whether to follow the guidelines, options, and support recommendations listed in the MUTCD. The expert acknowledged that the guidance provisions are recommended practices but are not mandatory. Plaintiff's expert conceded that the guidance statements in the MUTCD can be modified or not followed based upon engineering judgment and that May did not violate any standards or laws in the placement or design of the crosswalk.

b. Immunity under Section 3—102

Plaintiff's complaint also alleges that defendant failed to maintain the working order of the streetlights at the time of the accident. In response, defendant offered evidence that the street lights were operating and in good repair at the time of plaintiff's accident. May testified that he reviewed the maintenance records for the street lights in the vicinity of the crosswalk on Cass Avenue around the time of the accident and found no reported problems.

Plaintiff counters that May's testimony was unreliable and points to several instances in the record of May's demonstrated lack of reliability. Plaintiff points out that McLaughlin, the driver who hit plaintiff, specifically testified about the poor visibility at the time she hit plaintiff and that she told this to the officer who wrote the ticket, and he agreed with her that the weather and absence of lighting contributed to poor visibility. Plaintiff further observes that she also stated that it was very dark in the area when she was attempting to cross the street. Plaintiff maintains that this created a genuine issue of material fact as to whether defendant failed to maintain the working order of the streetlights at the time of the accident. Plaintiff argues that, because the police officer knew of and agreed that the lack of lighting contributed to poor visibility, it creates a genuine issue of fact as to whether defendant had actual or constructive knowledge that it failed to maintain the lights.

Section 3—102(a) of the Act provides that a local public entity "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 2008). Constructive notice under section 3—102(a) of the Act "is established where a condition has existed for such a length of time, or was so conspicuous, that authorities exercising reasonable care and diligence might have known of it." *Burke v. Grillo*, 227 Ill. App. 3d 9, 18 (1992). Contrary to plaintiff's assertion, the burden of proving notice is on the party charging it. *Burke*, 227 Ill. App. 3d at 18.

Even if May's testimony was unreliable, plaintiff still failed to establish actual or constructive notice that defendant failed to maintain the lights within the meaning of section 3—102(a). Plaintiff's evidence only establishes that the lighting condition was not sufficient at the time of the

accident. Plaintiff offered no evidence that defendant failed to maintain the lights in the area of the crosswalk and that this condition existed for a reasonable length of time prior to the injury for defendant to have taken measures to remedy the situation, and plaintiff failed to establish that the lighting condition was so conspicuous that the authorities exercising reasonable care and diligence might have known of it. As such, we must reject plaintiff's argument and find that the failure to present evidence of notice, either actual or constructive, was insufficient to avoid summary judgment.

c. Section 3—104 Immunity

We last address plaintiff's allegation that defendant was liable for failing to place an advance pedestrian crossing warning sign. Plaintiff initially points out that defendant did not argue in its motion for summary judgment that section 3—104 of the Act (745 ILCS 5/3—104 (West 2008)), immunized defendant from liability for failing to place an advance pedestrian crossing warning sign, but the trial court nevertheless found plaintiff's allegation was barred by section 3—104. Plaintiff maintains that it was manifestly unfair "to first be confronted by an argument as the trial court is ruling."

We fail to see how plaintiff was surprised by the trial court's finding since defendant did raise the argument as one of its affirmative defenses to plaintiff's complaint. Even if plaintiff did not have notice that defendant or the trial court would rely on section 3—104 in the summary judgment proceeding, plaintiff does not and cannot argue how this manifest injustice prejudiced her where she has been able to fully argue the issue on appeal. In any event, we need not defer to the trial court's reasoning and may instead affirm the judgment on any basis supported by the record. *Salerno v. Innovative Surveillance Technology, Inc.*, 402 Ill. App. 3d 490, 496 (2010).

We also are unpersuaded by plaintiff's argument that 3—104 does not immunize defendant from liability.

Section 3—104 provides:

> "Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to initially provide regulatory traffic control devices, stop signs, yield right-of-way signs, speed restriction signs, distinctive roadway markings or any other traffic regulating or warning sign, device or marking, signs, overhead lights, traffic separating or restraining devices or barriers." 745 ILCS 10/3—104 (West 2008).

The plain language of section 3—104 immunizes the failure to *initially* provide traffic control devices. "Where the language of a statutory provision is clear, a court must give it effect." *Governmental Interinsurance Exchange*, 221 Ill. 2d at 217-18.

In this case, plaintiff alleges that defendant was negligent in failing to install an advance warning sign. Thus, plaintiff alleges that her injury was caused by defendant's failure to initially provide a warning sign by the crosswalk. Accordingly, pursuant to the plain meaning of the statutory provision, neither defendant nor its employee can be liable for an injury caused by the failure to initially provide an advance warning sign.

Plaintiff's reliance on *Parsons v. Carbondale Township*, 217 Ill. App. 3d 637 (1991), does not support her argument. In *Parsons*, the plaintiff alleged that the defendant breached its duty by installing a sign near a dangerous hill in violation of the MUTCD and the Vehicle Code. *Parsons*, 217 Ill. App. 3d at 644-45. The appellate court held that the defendant had a duty of reasonable care to conform to the specifications of the MUTCD and the Vehicle Code, "having undertaken to install the road sign by the dangerous hill." *Parsons*, 217 Ill. App. 3d at 645. Here, unlike in *Parsons*,

plaintiff never alleged that defendant installed a sign in a negligent manner. Rather, plaintiff alleged liability based upon defendant's failure to post any advance warning sign, which is immunized by section 3—104.

CONCLUSION

In sum, under the facts presented, defendant is statutorily immune from plaintiff's cause of action for negligence as alleged in count II of her complaint. Accordingly, summary judgment for defendant is proper. Based on the foregoing, the decision of the circuit court of Du Page County to grant defendant's summary judgment motion pursuant to section 2—1005 of the Code is affirmed.

Affirmed.