

IN THE COURT OF CLAIMS OF OHIO

FILED
COURT OF OHIO
2015 NOV -4 AM 11:07

HANNAH SCOLARO

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2015-00304-AD

Judge Patrick M. McGrath

ENTRY VACATING ADMINISTRATIVE
DETERMINATION

This case came to be heard upon defendant's September 4, 2015 motion for court review of the clerk's determination pursuant to R.C. 2743.10(D). Upon review of the record, the court finds that there is substantial error in the clerk's determination. See C.C.R. 6(H)(6).¹

On April 6, 2015, in her form complaint, plaintiff alleged that she broke her two front teeth when she fell on an icy sidewalk on defendant Ohio University's campus. The accident occurred around 12:45 p.m. on February 21, 2015. Plaintiff alleged that defendant was negligent for failing to clear snow after a storm. Defendant filed an investigation report stating that it was not liable for the natural accumulation of ice and snow pursuant to *Brinkman v. Ross*, 68 Ohio St.3d 82, 85 (1993) (rejecting "the notion that a landowner owes a duty to the general public to remove natural accumulations of ice and snow from public sidewalks * * * even where a city ordinance requires the landowner to keep the sidewalks free of ice and snow"). Plaintiff filed a response indicating that she was being careful, but defendant should have salted the sidewalks if students were expected to walk down a hilly cement walk.

In his decision, the clerk found that while *Brinkman* is still the law, there is an exception when a local government has enacted an ordinance requiring ice and snow removal. Applying *negligence per se*, he found for the plaintiff because defendant failed

¹Defendant's August 17, 2015 motion to allow discovery is hereby DENIED as moot.

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to comply with a local Athens ordinance requiring ice and snow removal, the ordinance provided for a criminal penalty, and it was designed to protect pedestrians like the plaintiff from kind of harm she suffered when she slipped and fell on the icy sidewalk.

Section 9.12.19(A) of the Athens City Ordinance states:

The owner, occupant, or person having the care of any building or lot of land bordering on any street with graded or paved sidewalk, within the first four hours after daylight, following or during a fall of snow, shall cause the snow to be removed from such walk; and this provision shall include snow or ice falling from any building.

Section 9.12.99 states:

Any person in violation of this section shall be deemed guilty of a minor misdemeanor and fined not more than \$100.00. Each day that a person continues to violate this section shall constitute a separate and complete offense. Conviction shall subject said permit to revocation.

Defendant, in its motion for court review, points out that it has failed to locate the exception noted by the clerk. In fact, according to defendant, *Brinkman* specifically provides that there is no duty "even where a city ordinance requires the landowner to keep sidewalks free of ice and snow." *Brinkman*, at 85.

The court agrees. The *Brinkman* court relied on another premises liability case which stated "that snow and ice are part of wintertime life in Ohio" and "a violation of a sidewalk snow-removal ordinance" could not create a prima facie case of negligence. *Lopatkovich v. Tiffin*, 28 Ohio St.3d 204, 206-207 (1986). The Supreme Court of Ohio has not overruled either *Brinkman* or *Lopatkovich*. Additionally, the Tenth District Court of Appeals recently applied *Brinkman* and expressly held that there is no duty to remove or warn the public of dangers associated with natural accumulations of ice and snow, "even where municipal ordinances require landowners to keep sidewalks free of ice and snow." *Luft v. Ravemor, Inc.*, 10th Dist. Franklin No. 11AP-16, 2011-Ohio-6765, ¶ 13. Here, plaintiff suffered her injuries during the day, when any naturally occurring

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accumulations of ice and snow would be visible to the naked eye. In sum, the clerk erroneously found that *Brinkman* contains an exception where the local government has enacted a statute penalizing failures of ice and snow removal.

Accordingly, the administrative determination granting plaintiff's claim is VACATED and judgment is rendered in favor of defendant. Pursuant to R.C. 2743.10(D), no further appeal may be taken from this judgment. Court costs shall be assessed against plaintiff.



PATRICK M. MCGRATH
Judge

cc:

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