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Illinois Appellate Court strengthens the notice defense to liability for injuries occurring on public sidewalks: *Zameer v. City of Chicago*

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The average Illinois municipality owns and maintains literally thousands of linear feet of public sidewalks adjacent to residential and business properties. Under Illinois law, municipalities are generally held to the same standard of care as private owners of property when it comes to the maintenance of public property. Municipalities are required to maintain property in reasonably safe condition for its intended and permitted use.

However, Illinois courts recognize that municipalities do not owe a duty to keep sidewalks in perfect condition at all times. Minor defects are typically not actionable because of the magnitude of the burden that such a duty would place on the operation of municipal governments. In addition, there are significant immunities and defenses set forth in the Illinois Local Governmental and Governmental Employees Tort Immunity Act,[1] that limit liability for injuries occurring as a result of sidewalk defects. One such defense is the lack of notice. In *Zameer v. City of Chicago*,[2] the Appellate Court recently interpreted the notice defense in a manner that should serve to limit municipal liability in residential sidewalk cases.

Plaintiff Shaheen Zameer tripped and fell on a differential in height of two inches between two residential sidewalk slabs at or near 6017 N. Sacramento Avenue in the City of Chicago. She suffered a broken wrist, requiring surgery, and multiple contusions and abrasions. She sued the city, claiming that it had failed to maintain the sidewalk in a safe condition. The city argued that it did not have notice of the defect and therefore incurred no liability pursuant to Section 3-102(a) of the Tort Immunity Act.[3] A city engineer testified that there was no way to tell when the defect came into existence. In addition, city records showed that there were two complaints five years earlier about sidewalk cracks in front of 6021 and 6019 Sacramento, and that 60 slabs of sidewalk in front of 6021 were repaired two years earlier. But, there was no evidence that the City knew about the defect at the specific location where the plaintiff fell.

The trial court granted summary judgment for the city, finding that there was neither actual nor constructive notice of the slab differential in front of 6017 Sacramento. The Appellate Court affirmed summary judgment. In doing so, the Court implicitly recognized the difficult burden that plaintiffs face in proving municipal liability in residential sidewalk cases.

The Court began its opinion by reaffirming that municipal tort liability is governed by the Tort Immunity Act. The Act serves to protect public entities and their employees from liability arising from the operation of government.[4] Next, as it relates to injuries occurring on public property, section 3-102(a) of the Act places the burden on the plaintiff to prove that the public entity had actual or constructive notice of a condition that is not reasonably safe in a reasonably adequate time prior to the injury to have

taken measures to remedy or protect against the condition.[5] While this is typically a question of fact, it can be decided as a matter of law when the evidence viewed in a light most favorable to the plaintiff so overwhelmingly favors the public entity that no contrary verdict can stand.[6] Also, constructive notice means notice of a condition that had existed for such a length of time, or was so conspicuous that a public entity exercising due care might have known about it.[7] Finally, notice of the specific condition, and not merely the condition of the area, is required to impose liability.[8]

The Appellate Court first rejected the plaintiff's argument that the City had actual notice of the defect. The Court found that complaints about the 6000 block of Sacramento were generally insufficient to show actual notice.[9] There was no record of any complaint to the City about the specific defect that caused plaintiff's fall at 6017 Sacramento.[10] The complaints about sidewalk cracks five years earlier concerned cracks in sidewalks at different, albeit adjacent locations.[11] Indeed, one of the complaints referenced a crack but did not specify the exact location at the address. The Court also rejected the plaintiff's argument that there was a "liberal approach" to statutory notice under the Tort Immunity Act.[12] Since no one reported the specific condition of the sidewalk in front of 6017 Sacramento, the City did not have actual notice of the defect.[13]

The Appellate Court also rejected plaintiff's constructive notice argument. The plaintiff claimed that photographs of the defect combined with prior complaints about the sidewalk in the 6000 block was enough to create a question of fact for purposes of summary judgment.[14] However, the Court found that the area in question was residential, and therefore less traveled than a commercial area.[15] Also, there was no evidence as to how long the defect existed, but there was testimony that the defect could have developed in as little as three weeks.[16] Nor did the prior complaints about the broader area of the sidewalk matter. The Court stated that "the presence of a general condition is irrelevant to the cause of her fall because the surrounding conditions did not cause her fall."[17] Thus, the Court held that the plaintiff had failed to meet her burden on summary judgment to provide facts showing that the City had constructive notice of the defect.[18]

Finally, the plaintiff argued that there was evidence of sidewalk repairs at 6021 Sacramento adjacent to where she fell. These repairs took place between two to five years before her fall. She also argued that this section of sidewalk remained free of defects for two years; therefore, it can be inferred that the defective sidewalk that caused her fall would remain in the same condition over that same period, so that a jury could infer that the defect existed for over two years. The Court agreed with the City that this argument was "sheer speculation," because there are many factors which affect how a sidewalk ages, including weather, traffic patterns, nearby trees, etc.[19]

The takeaway from the Appellate Court opinion in *Zameer* is that prior notice of a sidewalk defect, at least in a residential area, is difficult to prove. Many municipalities use complaint-based systems to repair sidewalks. Unless records show a complaint about the very specific defect at issue, or unless there is some competent evidence that the defect existed for such a length of time, or was so conspicuous, that the city or village is chargeable with knowing about it, the municipality should not incur liability. ■

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1. 745 ILCS 10/1-101 et seq.

2. 2013 IL App (1st) 120198

3. 745 ILCS 10/3-102(a) (West 2010)

4. Id. at ¶ 14

5. Id.

6. Id.

7. Id. at ¶ 14

8. Id. at ¶ 16

9. Id. at ¶ 17

10. Id.

11. Id.

12. Id. at ¶ 18

13. Id.

14. Id. at ¶¶ 19-20

15. Id. at ¶ 20

16. Id.

17. Id. at ¶ 23

18. Id. at ¶ 24

19. Id. at ¶ 25

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Member Comments

Looks like there needs to be an Illinois equivalent to the New York state trial lawyer's association mapping effort, which responded to a similar notice-based liability limitation:
http://en.wikipedia.org/wiki/Big_Apple_Pothole_and_Sidewalk_Protection_C...

— William A. Price on October 4, 2013

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