ILLINOIS TORT IMMUNITY
CASE LAW UPDATE

Presented and Prepared by:
Andrew J. Keyt
akeyt@heyloyster.com
Peoria, Illinois • 309.676.0400

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The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.
II. ILLINOIS TORT IMMUNITY CASE LAW UPDATE

I. OVERVIEW AND HISTORICAL UNDERPINNINGS

Sovereign Immunity dates back centuries ago and was adopted by the English common law system. Our system of jurisprudence was originally founded on the old English common law, and this doctrine has survived in some form or another since the beginning of our country. The United States (and all the states) has had some form of Sovereign Immunity throughout its history, though today it is referred to as tort immunity and its protections are not as wide-sweeping and absolute as they were centuries ago. Today, the doctrine is codified into various acts, such as the Federal Tort Claims Act (which waives some, but not all of the immunities).

In Illinois, we have the Tort Immunity Act. The Illinois Supreme Court abolished Sovereign Immunity in 1959 with its decision in *Molitor v. Kaneland Comty. Unit Dist. No. 302*, 18 Ill. 2d 11 (1959). In response, the Illinois General Assembly enacted the Local Governmental & Governmental Employees Tort Immunity Act in 1965 (commonly referred to as the Tort Immunity Act). 745 ILCS 10/1 et seq. The Tort Immunity Act (TIA) protects public entities and employees from liability for its actions. However, this immunity is not absolute, it merely protects some (not all) of the activities of governments. 745 ILCS 10/1-101.1(a). This two part article is intended as a brief guide to Illinois’ Local Governmental & Governmental Employees Tort Immunity Act (TIA). The current Act reflects the principle that local governments are liable in tort, but that liability is limited by the extensive immunities and defenses set forth in the Act. Immunity under the Act is an affirmative defense and is the defendant’s burden to establish.

The Act contains 10 articles separated into broad topics. The application or inapplicability of one section of an article does not prevent application of another section of another article. The substantive portions of the Act are codified as follows: Article II (general provisions); Article III (immunity from liability for injury occurring on public property); Article IV (police and correctional activities); Article V (fire protection and rescue services); and Article VI (medical, hospital and public health activities).

The purpose of this article and presentation is to provide an update on recent case law. The focus is on property related claims as those are the most prominent.

II. RECENT CASE LAW ON DISCRETIONARY ACTS V. MINISTERIAL DUTIES

745 ILCS 10/2-201: 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.

A. **Robinson v. Washington Twp.**

Robinson v. Washington Twp., 2012 IL App (3d) 110177 – Plaintiff was injured in motor vehicle accident after vehicle struck pothole. Township was in process of repairing roadway. Township asserted on summary judgment that the decisions as to how to maintain the roadway while construction was ongoing were discretionary decisions. The third district reversed the summary judgment order. The appellate court held that the township had made the discretionary decision to fill potholes and upgrade the roadway where the accident had occurred. The appellate court emphasized that since the discretionary decision to actually undertake to fix the road had already been made, the township’s actions in fulfilling that decision to repair the road became ministerial duty once the work began. Therefore, the township was subject to the duty of ordinary care in filling the potholes and removing debris as opposed to the blanket immunity of 2-201.

B. **Gutstein v. City of Evanston**

Gutstein v. City of Evanston, 402 Ill. App. 3d 610 (1st Dist. 2010) – Plaintiff fell and suffered injuries to her elbow resulting from the municipality’s alleged negligent maintenance of an unimproved alley in the back of plaintiff’s home. The jury returned a verdict in favor of plaintiff. The City of Evanston appealed and argued that its decision whether or not to improve and maintain the alley location were “discretionary acts.” The first district appellate court rejected this argument finding that plaintiff had proven that he was an “intended and permitted user of the alley” within the meaning of section 3-102(a) and the City’s maintenance decisions regarding the upkeep of the alley’s location where the garbage waste bins are situated were ministerial in nature, and not discretionary.

C. **Richter v. College of DuPage**

Richter v. College of DuPage, 2013 IL App (2d) 130095 – In this case, plaintiff tripped and fell on a public sidewalk located on a community college property owned by DuPage County. The sidewalk slabs were allegedly uneven. The property manager was waiting to determine which sidewalks needed repairs until after the winter season. The College of DuPage had “no set of rules in place as to how the property manager made repair determinations.” The appellate court emphasized that the public entity was exercising its sole discretion in making determinations on which sidewalks to upgrade. The appellate court found these were discretionary decisions to which the blanket immunity of section 2-201 was applicable.
D. **Fender v. Town of Cicero**

*Fender v. Town of Cicero*, 347 Ill. App. 3d 46 (1st Dist. 2004) – Family members sued a town and the town’s police officers for the officers’ failure to rescue a family from a house fire caused by arson. One of the issues before the court was whether the officers’ decision to not rescue the family was “willful and wanton.” The court held that even if the officers’ acts were willful and wanton, immunity would still apply under section 2-201 of the Act, because the officers had to make a policy decision in balancing competing interests of their own safety and their chances of rescuing the victims successfully.

III. **RECENT CASE LAW ON PROPERTY RELATED CLAIMS**

A local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for people whom the entity intended and permitted to use the property. 745 ILCS 10/3-102(a). This general duty has limitations found elsewhere in the Act, such as the immunities specific to the usage of streets or recreational properties. See 745 ILCS 10/3-105; 745 ILCS 10/3-106.

745 ILCS 10/3-102a: 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.

A. **Bowman v. Chicago Park Dist.**

*Bowman v. Chicago Park Dist.*, 2014 IL App (1st) 132122 – A thirteen-year-old girl fractured her ankle while going down a playground slide when her foot became caught in a hole in the plastic at the bottom of the slide. The minor’s mother brought suit and alleged willful and wanton conduct for failure to repair the hole in the slide. The Park District had been informed of the hole more than a year earlier. However, the Park District had a rule that the slide was designed for users under 12. Trial court granted summary judgment on the grounds that minor had violated park rules in the use of the slide and was therefore not an intended and permitted user of the slide. The First District Appellate Court held the minor was a permitted and intended user of the playground under the section 3-102 of the Tort Immunity Act, despite the ordinance that prohibited children over twelve from using the playground equipment, particularly where no signage was provided articulating the Park District’s rule.
B. Pattullo-Banks v. City of Park Ridge

Pattullo-Banks v. City of Park Ridge, 2014 IL App (1st) 132856 – Plaintiff alleged she was hit by a car when she had been forced to cross the street where there was no marked crosswalk because the appropriate crosswalk location was blocked with plowed snow. The City asserted that the plaintiff was not an “intended or permitted user” of the street location and thus not owed any duty of ordinary care under section 3-102(a). The appellate court reversed the summary judgment for the City and emphasized that plaintiff had not alleged that the City of Park Ridge had breached its duty to maintain its street. Rather, plaintiff alleged that Park Ridge failed to properly maintain the crosswalk on and adjacent to the sidewalk. The appellate court ruled it was irrelevant whether plaintiff was an intended and permitted user of the street, but focused on whether or not the City breached its duty to maintain the sidewalk and crosswalk location where the snow had been deposited.

C. DeMambro v. City of Springfield

DeMambro v. City of Springfield, 2013 IL App (4th) 120957 – Plaintiff stepped into a pothole while attempting to enter her vehicle which was parked on a city street. Trial court granted summary judgment. The fourth district disagreed and reversed the summary judgment. The opinion emphasizes that because plaintiff was using the street for ingress and egress from her vehicle, which was parked at a proper parking space on the street, she was an “intended and permitted user of the street where she had parked her car.”

D. Belton v. Forest Preserve Dist. of Cook County

Belton v. Forest Preserve Dist. of Cook County, 407 Ill. App. 3d 409 (1st Dist. 2010) – In this case, a tree limb fell onto plaintiff’s vehicle while driving on a public road adjacent to the public park where the tree stood. Plaintiff alleged that the park district was negligent in inspecting and maintaining its trees adjacent to the roadway. The appellate court went through a lengthy analysis of the duty owed in a negligence claim under section 3-102(a) and found the recreational property immunity of section 3-106 to be inapplicable. Plaintiff was not in the park at the time of the tree limb falling on her vehicle causing the injury alleged.

E. Perfetti v. Marion Cnty.

Perfetti v. Marion Cnty., 2013 IL App (5th) 110489 – In this case, plaintiff allegedly lost control of his car as a result of defects on the road surface he was driving on. The circuit court granted directed verdict as plaintiff had not provided any evidence of actual notice of the alleged defect. The appellate court emphasized that to prove constructive notice to a public entity of a condition, such condition must be so conspicuous or plainly visible that the county could have or should have known of it after a passage of time.
F. Berz v. City of Evanston

Berz v. City of Evanston, 2013 IL App (1st) 123763 – A bicyclist filed a complaint alleging negligence against the city stemming from an injury that occurred when the bicyclist struck a pothole while riding in an alleyway. The court granted the city’s motion to dismiss finding the bicyclist was not an intended user of the alley under 3-102 of the Tort Immunity Act. The appellate court affirmed reasoning that the proper test for determining if the bicyclist was the intended user was to look at the nature of the property itself, such as pavement markings, signs, and other physical manifestations of the intended use of the property. The court found that there were no pavement markings or signs indicating bicyclists were intended to ride in the alley.


Pence v. Northeast Ill. Reg’l Commuter R.R. Corp., 398 Ill. App. 3d 13 (1st Dist. 2010) – This case provides a good analysis of what is required under section 3-102(a) for a plaintiff to establish that they are both an “intended and permitted user” of public property for a duty of ordinary care to arise. Plaintiff was a pedestrian who tripped over a bolt protruding from a railway line. The appellate court found plaintiff did not qualify as an “intended and permitted user” of the street adjacent to the train station. Had plaintiff actually made it to the train station and then fallen on a protruding bolt, defendant would have been subject to an ordinary negligence duty, or possibly an even higher duty as a common carrier under Illinois law.

H. Sexton v. City of Chicago

Sexton v. City of Chicago, 2012 IL App (1st) 100010 – Plaintiff proceeded to trial on allegations that the City of Chicago had a duty to put a more instructive sign near a railroad crossing, where the plaintiff’s decedent had been struck by a train. The jury trial proceeded under ordinary care instructions based upon the duty to maintain the city property under section 3-102(a). Plaintiff obtained a $5,000,000 verdict in the case, and the city appealed. The first district reversed emphasizing that plaintiff’s allegations that “better signage” was necessary was insufficient to get around the absolute immunity of section 3-104 which immunizes against claims for a failure to provide signage or traffic control systems. See also 745 ILCS 10/3-104.

I. Smart v. City of Chicago

Smart v. City of Chicago, 2013 IL App (1st) 120901 – Plaintiff/bicyclist was injured while riding on a road being resurfaced. The front tire of plaintiff’s bike lodged into a groove in the roadway, and his bike came to an abrupt stop. He flew over the handle bars and landed on his shoulder. The first district affirmed the jury’s verdict in favor of the plaintiff and found the duty imposed upon the City of Chicago with regard to the maintenance of its street surface during construction was governed by general negligence principles.
J. Abrams v. Oak Lawn-Hometown Middle School

Abrams v. Oak Lawn-Hometown Middle School, 2014 IL App (1st) 132987 – This case addressed the issue under section 3-106 (recreational property) of whether a combined school cafeteria and auditorium was “intended or permitted to be used for recreational purposes.” Plaintiff fell and sustained an injury on an uneven floor surface. The first district analyzed the factors for determining whether the property was “recreational” and found that the primary educational use of the combined cafeteria and auditorium precluded a determination that the floor at issue was “recreational.” Therefore the duty of ordinary care of section 3-102 was still applicable.

K. Bielema v. River Bent Cmty. Sch. Dist. No. 2

Bielema v. River Bend Cmty. Sch. Dist. No. 2, 2013 IL App (3d) 120808 – Student slipped in a puddle of liquid in a high school gymnasium during a volleyball scrimmage. The school district took some action to mitigate the risk posed by the spill when the school’s principal asked her husband to stand guard over the spilled liquid while she retrieved materials to clean up the spill. The court held his mere ineffectiveness in preventing the injury did not rise to the level of willful and wanton misconduct (utter indifference or conscious disregard for the safety of others).

L. Moore v. Chicago Park District

Moore v. Chicago Park Dist., 2012 IL 112788 – The decedent fell in a parking lot while she was leaving a building owned and operated by the Chicago Park District. Three inches of snow had fallen two days earlier and the Chicago Park District had plowed the parking lot and shoveled and salted the sidewalk leading to the building’s main entrance. This case addressed the interplay between the natural accumulation of snow rule and the Tort Immunity Act. The Illinois Supreme Court found that the Tort Immunity Act does not limit a condition of any public property to only what is affixed to the property. This holding was contrary to the Illinois Supreme Court’s holding in Stein v. Chicago Park Dist., 323 Ill. App. 3d 574, 577 (1st Dist. 2001). The language of section 3-106 does not contain a requirement that a condition of public property must be “affixed” before immunity applies, holding that snow and ice constitutes a “condition on the property” within the meaning of section 3-106.

M. Grundy v. Lincoln Park Zoo

Grundy v. Lincoln Park Zoo, 2011 IL App (1st) 102686 – Plaintiff sued the City of Chicago for an injury sustained as a result of tripping over a movable sign at the Lincoln Park Zoo’s outdoor café. The park district asserted that the sign was a “condition of public property” for purposes of raising the recreational property immunity in section 3-106. The case went to the first district on a certified question regarding the import of the holding in the prior case of Stein v. City of Chicago, which the first district in this case declined to follow, holding instead that the sign, even though it was movable and not affixed to the property, qualified as a “condition of public property” within the meaning of section 3-106. Therefore, the plaintiff was obligated to prove willful and wanton conduct.
Andr...
“Fire District Liability for Emergency Response”
IDOT (2009)

“Legal Concerns, Discussion, and Questions”
Township Highway Commissioners of Illinois
Summer Seminar (2009)

“Liability for Failure to Comply with the Manual on Uniform Traffic Control Devices”
Heyl Royster Fall Seminar for Governmental Entities (2008)

“Substantive Recreation Law”
Abraham Lincoln American Inn of Court (2008)

“FOIA”
Special Librarians Luncheon, Alliance Library System (2008)

Professional Associations

- Peoria County Bar Association
- Illinois State Bar Association
- Abraham Lincoln American Inn of Court

Court Admissions

- State Courts of Illinois
- United States District Court, Central and Northern Districts of Illinois

Education

- Juris Doctor (magna cum laude), Northern Illinois University School of Law, 2002
- Bachelor of Science-Criminal Justice, Illinois State University, 1998