

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLAUD CALVIN YOUNG and DORIS YOUNG : CIVIL ACTION
:
v. :
:
UNITED STATES OF AMERICA, ET AL. : NO. 02-343

MEMORANDUM

Padova, J.

October 15, 2002

Plaintiffs have brought this personal injury suit against the United States, Northampton Township, Stephen and Joan Haegele, and Bonnie H. Nolte, arising out of an automobile accident which occurred on August 11, 2000. Before the Court is the Motion for Summary Judgment brought by Defendant Northampton Township. For the reasons which follow, Defendants' Motion is granted in part and denied in part.

I. BACKGROUND

On the afternoon of August 11, 2000, Claud Calvin Young ("Young") was driving on Sackettsford Road in Northampton Township, Bucks County, Pennsylvania approaching a sharp curve to the right. Pl.'s Ex. B at 22, 42-43. It was raining. Id. at 22. As Plaintiff came around the curve, he saw a United States Postal Service mail truck stopped on the road in front of him. Id. at 43, 50-51. He swerved into the opposing lane of Sackettsford Road to avoid hitting the mail truck and collided with a cement mixer going in the opposite direction. Pl.'s Ex. B at 43.

Sackettsford Road is a two lane road with one lane in each direction. Id. at 42. The speed limit on Sackettsford Road is 40 m.p.h. Pl.'s Ex. F at 24. There is an advisory sign before the curve to advise traveling motorists to negotiate the curve at 30 m.p.h. Id. at 64-66. Young was driving 30 m.p.h. Pl.'s Ex. B at 39.

The mail truck was stopped in the vicinity of the mailbox for 743 Sackettsford Road. Pl.'s Ex. C at 7. 743 Sackettsford Road is located on the north side of Sackettsford Road. Id. at 5. On August 11, 2000, the mailbox for 743 Sackettsford Road was located on property owned by Bonnie Nolte on the south side of Sackettsford Road because curbside mail delivery was only made on the south side of that portion of Sackettsford Road. Pl.'s Ex. N at 5, 9-10, Pl.'s Ex. H. The mailbox had been located on Nolte's property for approximately 55 years. Pl.'s Ex. E at 23-24. Photographs of the area show that there are bushes, vines, and trees around the mailbox for 743 Sackettsford Road and on Nolte's property on the inside of the curve in the road. Pl.'s Ex. A.

Northampton Township has owned and maintained Sackettsford Road since 1984. Pl.'s Ex. F at 8-9. Northampton Township has a right of way of thirty-three feet on Sackettsford Road. Id. at 14-15. The width of the cartway (the paved portion of the road) is twenty feet, leaving a right of way of six and one-half feet on either side of the pavement. Id. at 15. The Township controls

vegetation on the right-of-way of its roads by mowing or trimming back growth that overhangs the cartway once in the spring and once in the fall. Id. at 18-19. The spring and fall mowing extends between four and five feet from the cartway, which is between two and one-half and one and one-half feet less than the right of way on each side of Sackettsford Road. Id. at 34.

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met

simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Evidence introduced to defeat or support a motion for summary judgment must be capable of being admissible at trial. Callahan v. AEV, Inc., 182 F.3d 237, 252 n.11 (3d Cir. 1999)(citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1234 n.9 (3d Cir. 1993)). The Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. However, "mere allegations, bare assertions or suspicions are not sufficient to defeat a motion for summary judgment." Felton v. Southeastern Penn. Transp. Auth., 757 F. Supp. 623, 626 (E.D. Pa. 1991) (citation omitted).

III. DISCUSSION

The Complaint alleges two counts against Northampton Township for negligence. The Complaint alleges that Northampton Township was negligent in the construction and maintenance of Sackettsford

Road, failing to provide adequate sight distance on the curve on Sackettsford Road where the accident occurred, failing to establish the appropriate speed limit for Sackettsford Road, failing to monitor the placement of the mailbox for 743 Sackettsford Road, failing to cut or remove vegetation from the right of way which interfered with the sight distance of motorists on Sackettsford Road, and failing to recognize and correct the dangerous conditions on Sackettsford Road. Compl. ¶ 35. Northampton Township contends that it is entitled to summary judgment on Plaintiffs' causes of action for negligence because it is immune from suit; Plaintiffs cannot prove that the vegetation on Sackettsford Road was the legal cause of the accident; and it did not control the location of the mailbox for 743 Sackettsford Road.

A. Sovereign Immunity

Northampton Township argues that it is entitled to summary judgment because Plaintiffs' claims against it do not fall under any of the exceptions to sovereign immunity provided by the Pennsylvania Political Subdivision Tort Claims Act. The Political Subdivision Tort Claims Act states that "[e]xcept as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa. Con. Stat. Ann. § 8541. The term "local agencies" includes townships. Deluca v. Whitemarsh Tp., 526 A.2d 456, 457

n.3 (Pa. Commw. Ct. 1987). The immunity of local agencies has been waived in certain, limited circumstances:

(a) Liability imposed.--A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

(1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity); and

(2) The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). As used in this paragraph, "negligent acts" shall not include acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct.

42 Pa. Con. Stat. Ann. § 8542. Plaintiffs argue that its claims against Northampton Township fall within the following recognized exceptions to governmental immunity set forth in 42 Pa. Con. Stat Ann. § 8542(b):

(3) Real property.--The care, custody or control of real property in the possession of the local agency . . .

(4) Trees, traffic controls and street lighting.--A dangerous condition of trees . . . under the care, custody or control of the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable

risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

* * *

(6) Streets.--

(i) A dangerous condition of streets owned by the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

42 Pa. Con. Stat. Ann. § 8542(b). Northampton Township argues that none of the exceptions to immunity apply in this case. Northampton Township relies on Finn v. City of Philadelphia, 664 A.2d 1342 (Pa. 1996) and the cases following Finn, which used the "on/of distinction" to determine which claims fall under the exceptions. Under the "on/of" analysis "immunity is waived only if a plaintiff alleges that her injuries were caused by a dangerous condition "of" the location at issue; allegations that a substance or object was "on" the location are insufficient." Jones v. Southeastern Penn. Transp. Auth., 772 A.2d 435, 442 (Pa. 2001) (citation omitted).

Northampton Township argues that the dangerous condition which Plaintiffs allege caused Young's accident was the existence of the mail truck on Sackettsford Road and not a condition of the road

itself. Using the on/of distinction, Plaintiffs' claims would not fall under any of the exceptions to sovereign immunity. Northampton Township's argument fails, however, because the Pennsylvania Supreme Court has rejected the "on/of distinction." See Jones v. Southeastern Penn. Transp. Auth., 772 A.2d 435 (Pa. 2001). The Pennsylvania Supreme Court has decided that, instead of the "on/of distinction", the following test should be used to determine whether a claim falls under the exceptions to sovereign immunity provided by the Political Subdivision Tort Claims Act:

we conclude that a claim for damages for injuries caused by a substance or an object on Commonwealth real estate must allege that the dangerous condition "derive[d], originate[d] or ha[d] as its source the Commonwealth realty" itself, if it is to fall within the Sovereign Immunity Act's real estate exception. Snyder, 562 A.2d at 311 & n. 5. In other words, assuming all other requirements of the statutory exception at 42 Pa.C.S. § 8522(b)(4) are met, the Commonwealth may not raise the defense of sovereign immunity when a plaintiff alleges, for example, that a substance or an object on Commonwealth realty was the result of a defect in the property or in its construction, maintenance, repair or design.

Id. at 442-43.

The Complaint alleges that Northampton Township was negligent in its care, custody and control of the real property in the right of way of Sackettsford Road, based on its failure to prune vegetation to allow motorists adequate sight lines. Compl. ¶ 35. Plaintiffs' expert, D. Hugh McLean, P.E., has opined that the

failure to control this vegetation limited motorists' sight distances on Sackettsford Road, creating a dangerous condition which was one of the causes of Young's accident. Pl.'s Ex. D-1 at 20-22. The dangerous condition, the vegetation, is a result of a defect in maintenance of the realty itself and thereby falls within the real property exception to governmental immunity, 42 Pa. Con. Stat. Ann. § 8542(b)(3).

To the extent that the dangerous condition was caused by trees, as opposed to other vegetation, the real estate exception does not apply. See 42 Pa. Con. Stat. Ann. § 8542(b)(3). The trees exception may apply, however, if Plaintiffs can "establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice. . . ." 42 Pa. Con. Stat. Ann. § 8542(b)(4). Plaintiffs maintain that Northampton Township had notice of the dangerous condition posed by trees growing on the Sackettsford Road right of way because Township employees were on the right of way twice a year to control the vegetation growing there and saw the vegetation, including the trees, growing in the Township's right of way. Those employees use mowers that only cut vegetation up to the diameter of a thumb. Pl.'s Ex. F at 34. The Township prunes trees growing in its right of way, but only those branches that hang over the cartway. Pl.'s Ex. F at 32-33. There is no evidence on the record of this Motion

that Northampton Township has any program to prune trees growing in its right of way that impede motorist's sight lines but do not hang over the cartway.

Plaintiffs also contend that defects of the road itself caused the accident. Pasquale Giradi testified that Sackettsford Road is only twenty feet across, less than the current Northampton Township standard of thirty-one feet. Pl.'s Ex. F at 16 and 59. Plaintiffs' expert has opined that the narrowness of Sackettsford Road contributed to the accident because there was an "absence of adequate areas for stopped vehicles to move out of the travel lanes [which] made the road dangerous in a manner that caused the crash." Pl.'s Ex. D-1 at 20. Plaintiffs also contend that the posted speed limit for Sackettsford Road was too high for drivers approaching the curve where the accident occurred. Plaintiffs' expert stated that "[o]bjective criteria show that the available stopping sight distance for an eastbound driver is sufficient for a speed of only 25 m.p.h., 15 m.p.h. below the posted speed limit and also less than that shown on the eastbound advisory speed plaque. The limiting feature is the vegetation on the inside of the curve." Pl.'s Ex. D-1 at 6. Plaintiffs claim that Northampton Township knew or should have known about the defects because it has controlled Sackettsford Road since 1984, but has not done any kind of survey or traffic count to determine whether the volume of

traffic on Sackettsford Road and has not re-evaluated the posted speed limit on that road. Pl.'s Ex. F at 11, 27.

The Court finds that there are genuine issues of material fact for trial regarding whether Young's accident was caused by factors which fall under exceptions to the Political Subdivision Tort Claims Act. Accordingly, Northampton Township's Motion for Summary Judgment based on its immunity to suit is denied.

B. Causation

Northampton Township argues that it is entitled to summary judgment on Plaintiffs' claims against it because Plaintiffs cannot establish that a breach of a duty it owed to Plaintiffs caused Young's accident. To succeed on a cause of action for negligence under Pennsylvania common law, Plaintiffs must prove the following:

1. A duty, or obligation, recognized by the law, requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the person's part to conform to the standard required: a breach of the duty.
3. A reasonably close causal connection between the conduct and the resulting injury.
4. Actual loss or damage resulting to the interest of another.

Moreover, the mere happening of an accident does not entitle the injured person to a verdict; [a] plaintiff must show that defendant owed him a duty and that duty was breached.

Ney v. Axelrod, 723 A.2d 719, 721 (Pa. Super. Ct. 1999) (citations omitted). Northampton Township admits that it has a "duty to

construct and maintain its streets so that they will be in a condition 'reasonably' safe for the use of the public. . . ." Burton v. Terry, 592 A.2d 1380, 1383 (Pa. Commwl. Ct. 1991). The Township has a duty to maintain "its streets so that they [are] reasonably safe. They will be deemed safe if they may be negotiated safely by all but the very reckless. However, there was no obligation on the [Township] to construct and maintain its streets in a manner that would insure the safety of all drivers." Merritt v. City of Chester, 496 A.2d 1220, 1221 (Pa. Commw. Ct. 1985).

Northampton Township argues that Plaintiffs cannot establish that any breach of this duty caused the accident because the cause of the accident was the presence of the mail truck in the roadway. Northampton Township further argues that there is no evidence that vegetation in the right of way caused the accident because Young, and witnesses Robert S. Millar and Daniel Owarzani, who had driven around the curve on Sackettsford Road before Young, testified at their depositions that there was nothing obstructing their view of the roadway as they drove around the curve where the accident occurred.

Plaintiffs argue that the speed limit, narrowness of the road, and vegetation, all within the control of Northampton Township, were causes of Young's accident. Plaintiffs' expert has opined that an excessive speed limit on the curve, the lack of adequate

areas for stopped vehicles, and the vegetation on the inside of the curve led to the limited sight distance on Sackettsford Road, contributing to the accident. Pl.'s Ex. F. at 20-22. There is additional evidence on the record of this Motion that vegetation on the inside of the curve on Sackettsford Road caused the accident. Millar testified that there is a clockwise bend in Sackettsford Road and "as you come around that bend you cannot see - I could not see [the mail truck] until I was probably about 20 feet from him, maybe less." Pl.'s Ex. C at 7. He also testified that the mailbox was set in bushes and that he could not see the mail truck as he approached the curve because it was a "blind curve." Id. at 5 and 19-20. Michael Macerato, the driver of the cement truck that struck Young's vehicle, also referred to that portion of Sackettsford Road as a blind curve. Plaintiffs argue, based upon the pictures of the relevant portion of Sackettsford Road, which show bushes, trees and other vegetation on the inside of the curve and around the mailbox, that the vegetation is the reason why the curve was blind. Pl.'s Mem. at 12, Ex. A. Young has also supplied an affidavit in opposition to the Motion in which he states that he was confused by the questions at his deposition, and the vegetation on the side of Sackettsford Road did obstruct his view as he approached around the curve:

5. During that deposition, I was asked several times about whether there was anything obstructing my view of the road in front of the truck.

6. To me, this question meant: was there anything directly in front of me that kept me from seeing the road and, in fact, there was nothing in the roadway that I could see and there was nothing hanging from the rear view mirror and there were no papers or stickers on the windshield that obscured my vision of the road directly in front of my truck.
7. Obviously, I cannot see around a blind curve or see through the trees and vegetation that was on the right hand side of the road as I approached the curve. Although at the time I did not realize the danger that was created by the stopped mail truck around the bend, as I now look at the photographs attached to this affidavit it is obvious, to me, that I could not see the truck because of the trees and vegetation that was [sic] present on the inside of that curve, to my right as I approached and began to round the curve in the road.
8. In fact, I note that the photographs were taken in November, about 3 months after the accident, and I can state with certainty, based on my knowledge of the weather and what happens to trees and foliage in the fall of the year in Bucks County, that there would have been even more leaves on the trees in August than [sic] are present in the photographs that were taken in November.

Pl.'s Ex. P ¶¶ 5-8. Viewing the evidence on the record of this Motion in the light most favorable to Plaintiffs, the Court concludes that there is a genuine issue of material fact for trial regarding whether Northampton Township breached its duty to maintain Sackettsford Road so that it would be reasonably safe for drivers and whether that breach was one of the causes of Young's accident. Northampton Township's Motion for Summary Judgment based upon lack of evidence of causation is, therefore, denied.

C. Mailbox Placement

Northampton Township also argues that it is entitled to summary judgment on Plaintiffs' claim that it was negligent in failing to monitor the placement of the mailbox for 743 Sackettsford Road (Compl. ¶ 35(e) and (f)) because the United States Postal Service has sole responsibility for the placement of the mailbox. Plaintiffs do not oppose this aspect of Northampton Township's Motion. Accordingly, Northampton Township's Motion for Summary Judgment is granted with respect to Plaintiffs' causes of action for negligence arising out of subparagraphs 35(e) and (f) of the Complaint.

An appropriate order follows.

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ORDER

AND NOW, this 15th day of October, 2002, in consideration of Northampton Township's Motion for Summary Judgment (Docket No. 27) and Plaintiffs' response thereto, **IT IS HEREBY ORDERED** that the Motion is **GRANTED** in part and **DENIED** in part as follows.

1. Defendant's Motion for Summary Judgment is **GRANTED** with regard to Plaintiffs' claims for relief based on subparagraphs 35(e) and (f) of the Complaint;
2. Defendant's Motion for Summary Judgment is **DENIED** with regard to Plaintiffs' claims for relief based on subparagraphs 35(a)-(d) and (g)-(h) of the Complaint.

BY THE COURT:

John R. Padova, J.