

Cyr v. VKB, LLC (AC 41818)

Brief Summary: Plaintiff sought damages for injuries sustained when she tripped on a public sidewalk that abutted the defendant's property. Court affirmed the trial court's summary judgment in favor of the defendants on counts one and two as § 21-37 did not shift liability to the defendants. It affirmed summary judgment on counts four and five because there was no allegation in either that any positive act on the part of the defendant's caused settling on the sidewalk. It reversed summary judgment on counts three, six and seven because the defendants failed to negate the factual claims in the complaint alleging they constructed the sidewalk with a defect that caused the plaintiff's injuries. Thus, there was a genuine issue of material fact—negating summary judgment.

The plaintiff, Cynthia Cyr, was walking on the sidewalk abutting the defendant's property. She tripped on a one and one-half inch lip between two sidewalk segments (a defect) and fell, sustaining physical injuries necessitating medical treatment. The plaintiff asserted the following claims: (1) negligence as to VKB (count one); (2) negligence per se as to VKB (count two); (3) nuisance as to VKB (count three); (4) negligence as to Shady Oaks Assisted Living (count four); (5) negligence as to Shady Oaks Rest Home (count five); (6) nuisance as to Vernon W. Belanger (count six); and (7) nuisance as to Kay F. Belanger (count seven). The plaintiff alleged alternative theories as to how the alleged defect in the sidewalk was created. The first, in counts one, two, four and five alleged that the defect developed because of the settling of one adjacent segment. Alternatively, on counts three, six and seven she alleged that VKB, or its predecessor(s), Vernon and/or Kay Belanger, through one or more of its employees constructed the sidewalk with the resulting defect. Finally, she alleged on each count that the defendants were responsible for keeping the sidewalk in a safe condition. The trial court granted summary

judgment in favor of the defendant on all counts. It concluded that Bristol Code of Ordinances § 21-372 does not shift liability for injuries on abutting sidewalks from the municipality to the owner and that the plaintiff did not allege, nor present any evidence suggesting that the sidewalk was constructed by the defendants. The issue on appeal was whether the trial court improperly granted summary judgment on all seven counts. The court concluded that summary judgment was improper on counts three, six and seven because a genuine issue of material fact existed, however, it was proper on all other counts. Thus, affirming in part and reversing in part the trial court's decision.

The duty to maintain public sidewalks in a reasonably safe condition belongs to the municipalities. Thus, abutting landowners (like the defendant) are generally not liable for injuries caused by defects on public sidewalks adjacent to their property. The two exceptions to this rule are: (1) in limited circumstances municipalities can confer liability to the abutting owner through a charter provision, statute or ordinance; and (2) landowners may be liable for injuries caused by defects they created by their own actions. Thus, to survive summary judgment the plaintiff in this case had to demonstrate that a genuine issue of material fact existed regarding whether the defendant caused the defect in the sidewalk.

The plaintiff conceded that city ordinance § 21-372 does not shift liability from the municipality to the defendant, thus, counts one and two were considered abandoned and summary judgment was affirmed.

The court then looked at counts four and five which alleged that the defect in the sidewalk developed because of the settling of one adjacent settlement. The court concluded that both counts were insufficient as a matter of law because the allegation is not that the defendant

caused the defect, rather it suggests that it resulted from nature and the passage of time (settling of an adjacent settlement). Thus, it does not fit into either exception.

Next, the court looked at counts three, six and seven, in which the plaintiff alleged that VKB, Vernon W. Belanger and Kay F. Belanger constructed a sidewalk on the property with a resulting 1/12” lip between sidewalk segments it installed and the sidewalk on the adjoining property. The court concluded that these allegations were sufficient to bring the claims within the second exception—that an abutting landowner can be liable in negligence for injuries resulting from an unsafe condition caused by a positive act by the defendant. The act of constructing the sidewalk with a lip is a positive act by the defendant, thus, they could be liable for injuries resulting from the lip. Because this allegation provides a legally cognizable basis for liability, the defendants had to demonstrate that they did not construct the sidewalk in order to win on summary judgment. On a motion by the defendant for summary judgment the burden is on the defendant to negate each claim framed by the complaint. Thus, the defendants bore the initial burden to negate the factual claims in the complaint. However, the defendants failed to present any evidence suggesting that they either did not construct the sidewalk or did not construct it with the alleged defect. Further, their reply brief stated that “it is not clear that the defendants actually constructed the sidewalk in question”—effectively conceding that there is a genuine issue of material fact as to whether they constructed the sidewalk. Consequently, the court concluded that the trial court improperly granted summary judgment in favor of the defendants on counts three, six and seven because the defendants never met their burden of negating the factual basis of the claims.

The key takeaway from this case is that abutting landowners, not municipalities, are held liable for injuries caused by defects they created. This is salient because it places a duty onto landowners to refrain from causing the sidewalk to be put in an unsafe condition.