IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BETTY BANTUM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 09C-02-026 PLA
	)	
NEW CASTLE COUNTY VO-TECH EDUCATION ASSOCIATION and AFRO-AMERICAN HISTORICAL SOCIETY OF DELAWARE,	)	
	)	
Defendants.	)	

UPON DEFENDANT NEW CASTLE COUNTY
VO-TECH EDUCATION ASSOCIATION'S
MOTION FOR SUMMARY JUDGMENT
GRANTED

Submitted: January 12, 2010
Decided: January 22, 2010

Elwood T. Eveland, Jr., Esquire, THE EVELAND LAW FIRM, Wilmington, DE, Attorney for Plaintiff.

Stephen J. Milewski, Esquire, WHITE AND WILLIAMS LLP, Wilmington, DE, Attorney for Defendant New Castle County Vo-Tech Education Association.

James M. Kron, Esquire, POTTER ANDERSON & CORROON LLP, Wilmington, DE, Attorney for Defendant Afro-American Historical Society of Delaware.

ABLEMAN, JUDGE

I. Introduction

In this personal injury action, Plaintiff Betty Bantum ("Bantum") filed suit against Defendants New Castle Vo-Tech Education Association ("NCVTSD") and the Afro-American Historical Society of Delaware ("the Historical Society"), seeking damages for injuries she allegedly incurred when she slipped and fell on ice in the Howard High School parking lot.

Defendant NCVTSD has moved for summary judgment on the basis that it is immune from liability under 14 *Del. C.* § 1056(h), which provides that public school boards that hold school premises open for non-school uses cannot be held liable for claims of negligent construction or maintenance of school property arising from such non-school use. As will be discussed more fully hereafter, the Court is satisfied that the immunity provided by the language of § 1056(h) is sufficiently broad to encompass injuries that occur as a result of slippery conditions on school property, and in fact all of the circumstances surrounding the incident that triggered this litigation suggest that this is the precise type of claim from which the legislature intended to exempt the school board. Accordingly, Defendant NCVTSD's Motion for Summary Judgment is **GRANTED** and it will be dismissed as a defendant from this case.

II. Factual Background

On the evening of February 16, 2007, Bantum went to Howard High School to attend the Afro-American Historical Society's Heritage Day celebration, for which her son was scheduled to perform in one of the bands. Although the celebration was held at a New Castle County public education facility, Howard High, the event was not sponsored by the county, city, state, or school; rather, the after-hours program was sponsored by the Afro-American Historical Society, a section 501(c)(3) tax-exempt organization that is incorporated in the state of Delaware.

At approximately 7:00 or 8:00 P.M. on the night of the incident, Bantum's daughter drove her car to the front of the school building. Bantum was in one of the passenger seats. Bantum testified at her deposition that because "ice was apparent" and the "parking lot was all ice," her daughter searched for a safe place to pull in and decided to drop her mother off near the front door.[1] Immediately upon stepping out of the car, Bantum slipped on a patch of ice, went "down with a thud," and never had a chance to enter the school. The Complaint alleges that Bantum sustained injuries to her back, neck, hip, and right shoulder as a result of her fall on the ice.

[1] Def. NCVTSD's Mot. for Summ. J., Ex. D (Dep. Test. of Betty Bantum), 25:8-23.

Prior to its event, the Afro-American Historical Society had received permission to utilize the school premises, and specifically the library/gallery and auditorium areas, for its Afro-American Heritage Day celebration. Approximately two weeks before, on January 30, 2007, the executive director of the Afro-American Historical Society, Harmon Carey, had completed an Application for Use of School Facility Agreement ("the Agreement") and a Facility Request Form, seeking to use the auditorium and gallery of the school from 5:00 P.M. until 8:00 P.M. on the evening of Thursday, February 16, 2007. While the Court assumes that school was not in session in the evening, whether or not classes were also being held during this time period is not material for the purposes of this motion.

The Facility Request Form was signed and submitted by Mr. Carey on behalf of the Historical Society, and approvals were granted by the Assistant Principal of the school on January 31, 2007 and by the Facility Supervisor on February 15, 2007. The form contains a "hold harmless" clause expressly releasing NCVTSD from liability for any claims arising out of the Historical Society's use of the premises. The form further provides that "WITHOUT EXCEPTION, proof of liability insurance MUST accompany

this form."[2] No proof of insurance was ever submitted with the form and, in fact, the Afro-American Historical Society did not have liability insurance.

It is undisputed that the Historical Society's celebration was a non-public school event and that Bantum was at Howard High School on the evening in question for the purpose of watching her son perform in one of the bands participating in that celebration.

III. Parties' Contentions

Plaintiff alleges in her Complaint that Defendant NCVTSD was negligent in allowing the parking lot to become icy and slippery, in failing to inspect and "maintain" the premises, and in failing to warn Ms. Bantum and other guests of the slippery conditions.

Defendant NCVTSD has filed the instant Motion for Summary Judgment, seeking dismissal of all of Bantum's claims against it on the ground that it is immune from liability pursuant to § 1056(h) of Title 14 of the Delaware Code, which exempts school boards from certain claims for negligent construction or maintenance of school property arising out of the use of school facilities by outside groups. NCVTSD submits that the circumstances surrounding Bantum's slip-and-fall injuries fit squarely within the statutory provision granting immunity to school boards because the

[2] Pl.'s Resp. to Def. NCVTSD's Mot. for Summ. J., Ex. A.

Afro-American Historical Society event was not held for a public school purpose and the condition of the parking lot and walkway was part of the school's maintenance functions.

In her response in opposition to NCVTSD's motion, Bantum contends that the removal of ice and the application of salt or sand cannot be termed "maintenance" of the school, and that "inspection of the premises and warning of existing dangers are not a part of either construction or maintenance of the school property."[3] Bantum urges that these duties are instead a function of the "operation" of the school premises. Furthermore, she contends that the immunity statute does not apply in this instance because it carves out protection only for construction and maintenance, but does not insulate the school board when it fails to issue warnings or when it permits use of its facilities to a non-insured organization. In summary, Bantum contends that § 1056(h) does not immunize NCVTSD from her claims that it was negligent in granting use of the building to the Afro-American Historical society without proof of insurance, in not fulfilling the "operational" task of clearing snow and ice, in not warning of the ice, and even in opening the building on the night in question.

[3] Pl.'s Resp. to Def. NCVTSD's Mot. for Summ. J., ¶ 8.

IV. Standard of Review

When considering a motion for summary judgment, the Court examines the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to judgment as a matter of law.[4] Summary judgment will only be granted if, after viewing the evidence in the light most favorable to the non-moving party, there are no material facts in dispute and judgment as a matter of law is appropriate.[5]

V. Analysis

Section 1056(h) of Title 14 of the Delaware Code extends immunity to school boards for certain claims arising from the use of school buildings and land for non-school uses:

> Any school board which permits the use of public school property for any use other than for public school use shall not be liable in tort for any damages by reason of negligence in the construction or maintenance of such property.[6]

This immunity is intended to "encourage the citizens of any community to participate in worthwhile community activities" by increasing incentives for school districts to permit community use of public school premises.[7]

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[4] Super. Ct. Civ. R. 56(c).

[5] *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879-80 (Del. Super. 2005).

[6] 14 *Del. C.* § 1056(h).

[7] 14 *Del. C.* § 1056(d).

As an initial matter, the Court rejects the notion proposed by Bantum that clearing ice and snow from the school's parking lots is not an act of "maintenance," but rather "a function of operation of the school premises."[8] This is a distinction without a difference. Although "maintenance" is not given a specific definition in § 1056, the dictionary definition for "maintain" entails an effort "to keep in a certain condition or position, especially of efficiency, good repair, etc."[9] Addressing accumulations of ice or snow in a school parking lot may indeed be a function of the school's operation, but it is also undoubtedly a function of maintaining the premises.

This Court recently addressed the scope of a school board's § 1056(h) immunity for negligent maintenance in *Boyle v. Christina School District Board of Education*.[10] In that case, the plaintiff fell on a set of bleachers while attending a cheerleading event on public school property and alleged that his fall was caused by negligence in the "setting up" of the bleachers. The Court held that the plaintiff's claim related to negligent "maintenance" and offered the following guidance regarding the construction of that term in light of the purpose of § 1056:

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[8] Pl.'s Resp., ¶ 8.

[9] WEBSTER'S NEW WORLD DICTIONARY 884 (College ed. 1966).

[10] 2009 WL 4653832 (Del. Super. Nov. 30, 2009).

> The term "maintenance" is not defined in the statute, and thus the Court must first look to the statute's purpose to glean some meaning. Section 1056(h) is intended to "encourage the citizens of any community to participate in worthwhile community activities" at school facilities. It goes without saying that the fulfillment of this purpose is in large part dependent upon the willingness of school districts to allow community use of their facilities. There is no financial incentive for school districts to lease their facilities as they are limited to charging users for the actual costs incurred by the district as a result of the use. Thus, if school districts are to be encouraged to allow the use of their facilities for community activities, they must have some assurance that allowing such use will not embroil them in lawsuits. This requires a broad reading of the immunity granted to them in subsection (h).[11]

The *Boyle* Court then considered an analogy that is highly relevant to the instant slip-and-fall case:

> Suppose for example that Mr. Boyle had been injured as a result of the failure of the janitorial staff to clean up a spill on the floor. This failure would indisputably constitute "maintenance" and therefore the district would be immune by reason of subsection (h). In the Court's view there is no meaningful distinction between the failure to erect the safety rails when setting up the bleachers and the failure to clean up a spill. Both therefore constitute "maintenance" for purposes of subsection (h).[12]

Bantum essentially contends that a school's failure to warn of negligent maintenance is conceptually distinct from the underlying maintenance problem itself insofar as the application of § 1056(h) is concerned. The

[11] *Id.* at *2 (citations omitted).

[12] *Id.* at *3.

Court disagrees. Bantum's constricted reading would permit plaintiffs to make an end-run around § 1056(h) simply by reframing clearly barred maintenance-related claims as ones for negligent failure to warn. This result generates a risk of litigation that would undermine the statute's purpose by discouraging districts from allowing community groups to use their facilities.

Similarly, the fact that the Afro-American Historical Society did not possess liability insurance does not alter the applicability of the immunity provision, and NCVTSD cannot be deemed "complicit," as Plaintiff argues,[13] because it did not insist upon proof of insurance as its internal form requires. In the first place, nowhere does the statute require that a school district permit use of its facilities only to groups or entities that are insured. The statute does not limit immunity from liability only where a school board has documentation or other proof that the use of its buildings was sponsored by a group with deep pockets. It makes far more sense to conclude that the proof-of-insurance requirement in NCVTSD's form is intended to provide an additional layer of protection for the school in the event that an injury occurs on its premises. Even if the Afro-American Historical Society violated the District's policy and the Agreement by failing to obtain

[13] Pl.'s Resp. to Def. NCVTSD's Mot. for Summ. J., ¶ 11.

insurance and to provide proof that it had done so, that omission does not defeat the district's § 1056(h) immunity.

Bantum's next argument — that NCVTSD should be liable for its negligence in allowing the Historical Society's event to take place, given the condition of the parking lot and walkways — also misconstrues § 1056(h). The statute is intended to relieve school boards from the burden of having to engage in extra monitoring and maintenance that would otherwise arise from opening school premises to outside groups. As with Bantum's argument regarding NCVTSD's failure to warn, virtually any claim for negligence in maintaining school premises could be framed as a claim for negligence in permitting the property to be used despite those maintenance failures. Reworking a negligent maintenance claim in this manner does not diminish the applicability of § 1056(h).

Finally, Bantum's contention that a "factual question" exists as to whether school was in session on the day of Bantum's fall[14] does not affect NCVTSD's entitlement to summary judgment. Under § 1056(h), a school board's immunity depends upon whether the claim arises from a non-public school use of the premises. Whether or not school happened to be in session on the same day or even at the same time that non-school use was occurring

[14] Pl.'s Resp. to Def. NCVTSD's Mot. for Summ. J., ¶ 3.

is irrelevant. Therefore, regardless of whether school was in session at Howard High on February 16, 2007, the crucial and undisputed fact is that Bantum was on the premises for a non-school event.

VI. Conclusion

Thus, the Court concludes that NCVTSD is entitled to immunity from Bantum's claims under 14 *Del. C.* § 1056(h). Defendant NCVTSD's Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge