IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THOMAS R. LAWSON, III,	) C.A. No. 07C-07-027 JTV
	)
Plaintiff,	)
	)
v.	)
	)
WILMINGTON COLLEGE OF DELAWARE, INC., WILMINGTON COLLEGE, INC., and DAISY CONSTRUCTION COMPANY,	)
	)
Defendants.	)

Submitted: October 10, 2008
Decided: January 5, 2009

Mr. Thomas R. Lawson, III, Lewes, Delaware. *Pro Se.*

Gary H. Kaplan, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware. Attorney for Defendants Wilmington College.

David A. Arndt, Esq., Kent & McBride, Wilmington, Delaware. Attorney for Defendant Daisy Construction Company.

Upon Consideration of Defendants' Motions For Summary Judgment
GRANTED

VAUGHN, President Judge

Lawson v. Wilmington College, et al.
C.A. No. 07C-07-027 JTV
January 5, 2009

ORDER

Upon consideration of the defendants' motions for summary judgment and the record of the case, it appears that:

1. The plaintiff, Thomas Lawson, brought this action against Wilmington College and Daisy Construction Company for injuries he sustained in a slip and fall accident on September 28, 2005. Wilmington College has a campus at 41 Rehoboth Avenue, Rehoboth Beach. The plaintiff, a student, was stepping off the sidewalk in front of the campus and tripped on a patch of uneven pavement, or a pothole, on Rehoboth Avenue. Daisy Construction has been named as a party because at the time it had a contract with the City of Rehoboth to replace the sidewalks and curbing on Rehoboth Avenue.

2. Rehoboth Avenue is the primary avenue in Rehoboth Beach with dual lanes running both east and west. The east/west lanes are separated by a median. At the time of the accident in question, Daisy Construction was between the first phase and the second phase of a two-phase contract with the City of Rehoboth. The first phase was for replacing sidewalks in the median, between the east and west bound lanes. That phase ran from November 1, 2004 to Memorial Day 2005. The second phase was for replacement of sidewalks and curbing outside the east and west bound lanes, that is, for the sidewalks and curbing between Rehoboth Avenue and the abutting private properties. Wilmington College's campus was one such abutting property. The sidewalk, curbing and the part of the street at the location where the plaintiff fell were part of phase two. Phase two was scheduled to begin November 1, 2005 and run to Memorial Day 2006. On the date of the accident involved here, Daisy Construction had not yet begun phase two, and had not taken possession of or

exercised any control over the area where the plaintiff fell.

3. The sidewalk and curbing along the outside of the Rehoboth Avenue lanes were owned and controlled by the City of Rehoboth. The City in fact exercised control over the sidewalks and curbing, and repairs thereto were performed by the City through contracts such as the one with Daisy Construction. The City had not imposed any obligation upon abutting landowners for repair or maintenance of City owned sidewalks or curbs.

4. In his complaint, the plaintiff alleges negligence on the part of Wilmington College and Daisy Construction. As to the College, the plaintiff alleges that it knew or should have known of the unsafe condition of the pavement; that the College's negligence in maintaining the sidewalk and curbing near its premises proximately caused the plaintiff's injuries; that the College had a duty to business invitees to keep its premises and surrounding areas in a reasonably safe condition; and that the College breached additional duties to make reasonable inspections of its premises and to warn business invitees of dangers it was or should have been aware of.

5. As to Daisy Construction, the plaintiff alleges that the contractor breached a number of duties to maintain the sidewalk and pavement areas in a reasonably safe condition for the benefit of foreseeable users. For example, the plaintiff claims that the sidewalk was defectively designed, that Daisy failed to inspect the area for an unsafe condition, that it failed to warn the public of the unsafe condition, and that it failed to comply with applicable laws and regulations.

6. Both defendants have filed motions for summary judgment. The College contends that the plaintiff has asserted no theory of liability against it for which relief can be granted. It contends that it owed no duty to the plaintiff relevant to his fall.

It further contends that it was not responsible for maintaining the sidewalk, curb or roadway in question; that its employees did not cause any defect in the sidewalk or curbing; and that it had no duty to warn about an alleged defect in the sidewalk or curbing.

7. Daisy Construction's central contention is that it had no involvement with or control over the sidewalk area where the plaintiff was injured during the time that the injury occurred. Under its contract with the City of Rehoboth, Daisy did not begin repair work on the outer sidewalks before October 31, 2005. Daisy maintains that the only activities it engaged in around the time of the plaintiff's injury were project meetings and other irrelevant pre-construction activities. Daisy emphasizes that the City of Rehoboth dictated the construction timetable, and that Daisy had no contractual obligation to perform any repairs or warn of any dangerous conditions prior to commencement of phase two of the project. Daisy argues that, because no evidence has been presented suggesting that it assumed responsibility for the area of the plaintiff's injury, there is no basis for imposing any duty to protect the plaintiff from the risk of harm which caused his injuries. Daisy further contends that the City of Rehoboth had control over the area where the plaintiff was injured at the time of the injury, and that the City was the only party who might have any responsibility for any injury that occurred due to alleged sidewalk, curbing or street defects at the time of the accident.

8. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[1] The

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

moving party bears the burden of establishing the nonexistence of material issues of fact.[2] If a motion is properly supported, the burden shifts to the nonmoving party to establish the existence of material issues of fact.[3] In considering the motion, the facts must be viewed in the light most favorable to the nonmoving party.[4] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances".[5] Negligence actions are not ordinarily disposed of on a motion for summary judgment.[6] However, "[w]hen the record is such that the evidence is so one-sided that one party should prevail as a matter of law, summary judgment is appropriate."[7]

9. As to Wilmington College, Delaware courts have held that an abutting landowner is not liable for injuries caused by the defective condition of a sidewalk, absent a statutory duty to repair the defect, unless the landowner caused the defect. The Delaware Supreme Court so ruled in *Eck v. Birthright of Delaware, Inc.*[8] There

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[2] *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. May 2, 2007).

[3] *Id*.

[4] *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

[5] *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *1 (Del. Super. Jan 31, 2007).

[6] *Reid v. Hindt*, 2005 WL 2143706, at *2 (Del. Super. Aug. 17, 2005).

[7] *Id*. (citations omitted).

[8] 559 A.2d 1227 (Del. 1989).

is no evidence that Wilmington College was under any statutory or municipal ordinance mandate to maintain the sidewalks in front of its premises. In fact, the record expressly shows that it was the City's responsibility. Daisy Construction contracted directly with the City to repair and renovate Rehoboth Avenue. Daisy's field superintendent testified at arbitration that the City is responsible for making changes to the street and sidewalk areas on Rehoboth Avenue, and that it also has the obligation to maintain those areas.[9] There is no evidence that the College caused any defect in the sidewalk or curb area. Therefore, under the undisputed facts of this case and the applicable law set forth in such cases as *Eck*, I conclude that Wilmington College is entitled to summary judgment.

10. In Daisy's case, its involvement with the outer sidewalks of Rehoboth Avenue was limited to pre-construction activities prior to October 31, 2005. Daisy had no contractual obligation to perform any repairs or ensure the safety of the outer sidewalk areas during its phase one work in the median. At the time of the plaintiff's fall, Daisy had neither assumed responsibility for the safety of the phase two work

[9] Motion of Defendant, Wilmington College, Inc., for Summary Judgment, Ex. D, Arbitration Transcript, at 22. *See also Burns v. Boudwin*, 282 A.2d 620, 622 (Del. 1971) ("It is generally held that a duty is imposed upon the city to use reasonable care to keep its sidewalks safe for passage by its citizens."); *Gilmore v. Commissioners of Rehoboth*, 189 A. 284, 288 (Del. Super. 1937) (applying language of city charter and general principles of municipal law, court found: "[B]y reason of the powers over its streets and sidewalks expressly given [the City of Rehoboth], it is apparent that by implication the duty to repair the sidewalk in question was imposed on it.").

areas,[10] nor exercised any actual control over the sidewalk area in question.[11] In the absence of any evidence indicating that Daisy exercised actual control over or otherwise assumed responsibility for the sidewalk area, there is no basis for imposing a legal duty on Daisy.[12] A contractor's common law duty to perform its tasks with reasonable care does not include taking safety measures that were neither within its contractual scope of work nor requested by the owner.[13]

13. For the foregoing reasons, the defendants' motions for summary judgment are ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File

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[10] *Urena v. Capano Homes, Inc.*, 901 A.2d 145, 153 (Del. Super. 2006) ("Those who have responsibility for workplace safety must take reasonable steps to ensure the safety of those at the worksite.").

[11] *Thurmon v. Kaplin*, 1999 WL 1611327, at *2 (Del. Super. Mar. 25, 1999). *See also Handler Corp. v. Tlapechco*, 901 A.2d 737 (Del. 2006) (finding as matter of law that general contractor exercised no control over manner and method of safety around open balcony where painting subcontractor was working).

[12] *Thurmon*, 1999 WL 1611327, at *2.

[13] *Id*.