

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1039

September Term, 2024

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ADRIAN BACKUS

v.

WASHINGTON SUBURBAN SANITARY  
COMMISSION, et al.

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Berger,  
Shaw,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: October 28, 2025

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

After stepping into an open water meter access hole and sustaining injuries, Adrian Backus, appellant, filed a negligence action in the Circuit Court for Prince George’s County against the Washington Suburban Sanitary Commission (“WSSC”), appellee, and others (who were either dismissed from the case or had never been served with process). The circuit court granted the WSSC’s motion for summary judgment,<sup>1</sup> prompting this appeal. We affirm.

## **BACKGROUND**

### **The Accident**

On February 28, 2020, a dry, sunny day, Mr. Backus was walking alone on a sidewalk in front of premises at 9213 Baltimore Avenue in College Park, Maryland. An avid walker, Mr. Backus was on his way home from the post office and took a route that he “had never taken before[.]” At approximately 3:25 p.m., he stepped into an “open hole,” which was used for access to underground water meters,<sup>2</sup> and suffered injuries.

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<sup>1</sup> By then, the other named parties who had been served were already dismissed from the case, and therefore, the entry of judgment in favor of the WSSC resulted in a final judgment as to all parties.

<sup>2</sup> Both in his original Complaint and his Amended Complaint, Mr. Backus referred to this hole variously as an “uncovered sewer manhole,” a “sewer” hole, a “sewer/water receptacle,” a “sewer/water hole,” and a “sewer/water hole/receptacle.” Despite Mr. Backus’s repeated attempts to link the hole to the sewage system, it is indisputable that the hole was for water meter access, i.e., part of the water distribution system, not the sewage/wastewater system.

A passing driver, Joshua Marco,<sup>3</sup> observed the fall. Mr. Marco stopped his vehicle and helped Mr. Backus out of the hole.<sup>4</sup> He and Mr. Backus looked nearby but could not see a cover plate for the hole.

Mr. Backus then entered Friendly Computers, next door to where the open hole was, at 9205 Baltimore Avenue,<sup>5</sup> and spoke with the store manager, John Cogliandolo. According to Mr. Backus, Mr. Cogliandolo told him that there was a cover plate over the meter access hole the previous night but that it was missing when he arrived at work the following morning,<sup>6</sup> i.e., the day of the accident.

At 4:01 p.m. that day, WSSC received a telephone call from Mr. Cogliandolo, notifying it of the hazardous condition. WSSC personnel were dispatched to the site and replaced the missing water meter cover plate at 6:10 p.m.

Shortly after his fall, Mr. Backus took photographs depicting the open hole in the sidewalk as well as its contents, which included a discarded paper coffee cup and dried leaves. He returned the following day and took photographs depicting the same hole, which by then had its cover plate re-installed.

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<sup>3</sup> In the Complaint and the Amended Complaint, the name is spelled “Marcoe.”

<sup>4</sup> Mr. Marco drove Mr. Backus home, and Mr. Backus’s wife subsequently took him to a medical facility for treatment of his injuries.

<sup>5</sup> The premises at 9213 Baltimore Avenue was unoccupied.

<sup>6</sup> Mr. Cogliandolo’s business card provided that Friendly Computers was open for business Monday through Friday at 10:30 a.m. February 28, 2020 was a Friday. Md. Rule 5-201(a)-(c).

### **Legal Proceedings**

After filing a timely Notice of Claim, as required under the Local Government Tort Claims Act, Md. Code (1974, 2020 Repl. Vol.), Courts & Judicial Proceedings Article, § 5-304, Mr. Backus filed a Complaint against the WSSC in the Circuit Court for Prince George’s County, alleging negligence. In that Complaint, Mr. Backus claimed, among other things, that the WSSC had failed to “maintain the WSSC sewer/water receptacle located within the sidewalk in a safe condition” and had failed to perform adequate inspections or to post signs warning of the dangerous condition.

Mr. Backus thereafter filed an Amended Complaint, naming additional defendants. Two of those additional defendants, Prince George’s County and the City of College Park, subsequently were dismissed from the case, and the other two were not served with process.<sup>7</sup>

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<sup>7</sup> The Amended Complaint also named several unknown defendants, none of whom were subsequently identified. The two named, unserved defendants, Hoang V. Do and Cindy T. Huyhn, were the record property owners of two addresses on Baltimore Avenue that were adjacent to the sidewalk where Mr. Backus fell. Attempts to serve them with process were unsuccessful, apparently because they were at a different address than indicated in the Amended Complaint. After summary judgment was entered in favor of the WSSC, and a notice of appeal was filed, there were no other parties in the case. Seven months after the notice of appeal was filed, Do and Huyhn filed pro se a motion to dismiss, which the court denied, stating (erroneously) that “there is no specific relief requested in the motion.” Several weeks later, Do and Huyhn filed pro se a motion to set hearing/trial date, which the court also denied, stating “It does not appear there is a record of your service.” Because Do and Huyhn were not parties at the time the notice of appeal was filed, the judgment entered in favor of the WSSC fully and finally adjudicated the rights of all the parties in the case. We, therefore, have appellate jurisdiction.

The remaining defendant, the WSSC, filed a motion for summary judgment, contending that Mr. Backus had failed to present evidence that it had either actual or constructive notice of the missing water meter cover plate in sufficient time to take corrective measures, and therefore, it could not be found negligent as a matter of law. The WSSC relied in part upon an attached affidavit, sworn by the Manager of its Meter Services Division, explaining that it has implemented an automated meter reading (“AMR”) system and that the meter at the accident location “has been read remotely since December 14, 2018.” That affidavit averred that “[a]ny maintenance, repair activities or updates related to a given property are logged into” one of several record systems maintained by the WSSC and specifically that “[i]f there is a report that a manhole cover is damaged, missing or misaligned, it is logged into one or more of” those systems. Upon reviewing those records, the affidavit further averred that:

the water service at the address was turned off on April 15, 2019, for nonpayment. No WSSC employees performed work on the water meter or the manhole cover at 9213 Baltimore Avenue, College Park, Maryland 20740, between April 15, 2019 and February 28, 2020. As such, neither WSSC nor one of its employees removed the water meter at 9213 Baltimore Avenue, College Park, 20740 during that time period. On February 28, 2020, WSSC was notified at 4:01 p.m. that the manhole cover at 9213 Baltimore Avenue, College Park, Maryland 20740 was missing, and a utility technician was dispatched to that location and a cover was replaced at 6:10 p.m.

Mr. Backus filed a memorandum in opposition, claiming that a Consent Decree in an otherwise unrelated case<sup>8</sup> imposed on the WSSC a duty to inspect “manhole covers” in the geographical region encompassing the accident location and that, therefore, the “WSSC clearly was not only in a position to know of the existence of an open manhole into which Mr. Backus fell but was required to have that information by Court Order – the Consent Decree.” In addition, Mr. Backus relied upon *Ogier v. City of Bellevue*, 459 P.3d 368 (Wash. Ct. App.), *rev. denied*, 466 P.3d 783 (Wash. 2020), which reversed a grant of summary judgment in favor of a municipality that conducted inspections of storm drain manholes every five years, and where the plaintiff was injured when she drove a vehicle at night over an open manhole in the middle of a street. *Id.* at 551-52. Mr. Backus further maintained that “the contents of the hole” and the damaged condition of its tightening screws, as depicted in contemporaneous photographs (Exhibits G and H), supported a reasonable inference that the dangerous condition had existed “for a period of weeks at a minimum.”

In conclusion, Mr. Backus asserted that “like in the *Ogier* case the facts and circumstances under which WSSC now operates reflect a heightened requirement of knowledge of their system, which requires them to actively observe [its] components electronically or otherwise thereby supplanting their historical system of providing maintenance only after some person notifies them.” Therefore, according to Mr. Backus,

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<sup>8</sup> *United States, et al., v. Wash. Sub. Sanitary Comm’n*, No. PJM-04-3679 (D. Md. Jul. 26, 2005).

“sufficient factors exist in the case to create a question for the jury to determine if WSSC had constructive knowledge and sufficient time to repair the danger,” and its motion for summary judgment “must be denied.”

In reply, the WSSC countered that the 2005 Consent Decree “does not apply to WSSC’s water distribution system,” that Mr. Backus’s reliance on it is “mislead[ing],” and it implies “a duty of care that does not exist.” The WSSC further contended that Mr. Backus, in his opposition to the motion for summary judgment, did “not support his professed disputes of material fact with transcripts of testimony, affidavits, or other statements made under oath,” as required under Maryland Rule 2-501(b), and that, instead, the inferences he drew from the undisputed facts “are not rational and would only lead to jury speculation.” The WSSC challenged Mr. Backus’s characterization of the hole in which he stepped as a “sewer hole,” insisting that the only evidence submitted indicates without doubt that the hole was from a missing water meter cover plate (the distinction is important because the water distribution system, of which the water meter cover is a part, is not subject to the Consent Decree). The WSSC further pointed out that Mr. Backus deposed that Mr. Cogliandolo had observed the water meter cover plate in its proper place the night before the accident, which means that the hazardous condition existed for less than one day. Under these circumstances, asserted the WSSC, there is insufficient evidence from which a reasonable jury could find constructive notice, and therefore, summary judgment in its favor should be granted.

Following a hearing, the circuit court granted summary judgment in favor of the WSSC and explained its reasoning as follows:

Either way,<sup>[9]</sup> the point is this: Is that we don't know what condition it was in, when it was in, who put it in that condition. There's been no evidence of that. So there are many explanations as to why those other things are rested and without an expert opinion, without talking about the screws and what happened, without an expert opinion, it's just speculation as to why it's not -- even in the light most favorable to the plaintiff, they have to be reasonable inferences and there are -- without any other evidence, you can't make the reasonable inference of that.

So with regard to the motion for summary judgment, as to the counts in the case -- and I understand your argument that you said that you were not aware -- that you thought you had more time for an expert, which I've never said on the record, I've never given that. I've never given you any thought, I thought -- I never said anything, I should say, to indicate that that would be the case. Even if it that was the case, you indicated I never said something should be passed this court date today.

In a motion for summary judgment, unlike a motion to dismiss, a motion to dismiss, you look at the four corners of your complaint to see if that's enough to move forward. And then after that, you have the motion for summary judgment, which in a light most favorable to the plaintiff, you make reasonable inferences with what is in your complaint, as well as all the other surrounding evidence that you've time to collect, the deposition, the interrogatories, things of that nature.

It's just -- it's not enough to withstand the motion for summary judgment. I think you need more and mainly an expert. The things that you are stating, they can't just be bald accusations. They have to be supported by some fact and the fact that the witness has mentioned that, but no one else -- no other -- in fact, let me just be clear as to what -- the witness said that he saw it the night before and, perhaps, then told the next day. Don't know if it was replaced, put back, none of those things exist and because of that, the Court is going to --

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<sup>9</sup> The parties had been arguing over which of two different meter cover plates had been installed to cover the open hole.

all those things, in the light most favorable to the plaintiff, I do not believe those are reasonable inferences that the Court can jump to and so I’m going to grant the motion for summary judgment in the case.

This timely appeal followed.<sup>10</sup>

## DISCUSSION

### Parties’ Contentions

Mr. Backus contends that the circuit court erred in granting summary judgment for several reasons. First, relying upon *Smith v. City of Baltimore*, 156 Md. 377 (2004), and *Keen v. City of Havre de Grace*, 93 Md. 34 (1901), he asserts that the evidence in this case (including the trash and debris found in the water meter access hole) was “such that, by virtue of its nature or the length of time it has existed,” the WSSC “would have learned of it by the exercise of due care,” and thus it was not entitled to summary judgment on the issue of constructive notice. *Smith*, 156 Md. App. at 386. Second, he asserts that the Consent Decree imposed on the WSSC a heightened duty of inspection of its utility covers and that the WSSC breached that duty, which should have precluded summary judgment. Third, Mr. Backus asserts that the WSSC has a non-delegable duty to regularly perform

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<sup>10</sup> Mr. Backus’s brief contains a section captioned, “Jurisdiction,” but unfortunately, that section was of little use to this Court because it did not demonstrate that there was a final judgment as to all parties. Because the Amended Complaint named multiple defendants, but the order contested on appeal concerned the grant of summary judgment in favor of only one of those defendants, we were forced to pore over the record to ascertain that there was, in fact, an appealable judgment. It was incumbent on Mr. Backus to point to particular parts of the record indicating that the remaining named defendants had been dismissed from the case and that the named but unserved defendants were, at the time judgment was entered, not parties in the case.

safety inspections of its utility covers and that its breach of that duty should have precluded summary judgment.

The WSSC counters that Mr. Backus provided no evidence that it had either actual or constructive notice of the missing water meter cover. The WSSC asserts that the Consent Decree applied only to its wastewater collection system, not its water distribution system, and that, as the defect at issue was part of the latter system, the Consent Decree is not relevant to this case. In a related vein, the WSSC asserts that Mr. Backus’s misplaced reliance on the Consent Decree amounts to an indirect attempt to invoke a “mode of operation” theory of premises liability that we have expressly considered and rejected in *Maans v. Giant of Maryland, LLC*, 161 Md. App. 620, *cert. denied*, 388 Md. 98 (2005). Applying Maryland law of notice to the undisputed facts of this case, the WSSC summarizes its view as follows:

Here, Appellant did not produce any evidence that the public notified WSSC that the water meter cover in question was missing. Appellant also did not produce any evidence that the water meter cover was missing for a sufficient period before his injury that WSSC would have discovered that the cover was missing. And, finally, Appellant did not produce any evidence that, armed with the knowledge that the water meter cover was missing, WSSC turned a blind eye and did nothing. Instead, the undisputed evidence is that as soon as WSSC had notice that the water meter cover was missing, it acted promptly and reasonably and replaced the cover.

In reply, Mr. Backus contends that the accumulation of trash and debris in the water meter access hole creates a triable issue of constructive notice because it supports an

inference that the hole was open for an extended time.<sup>11</sup> He further maintains that the Consent Decree makes its reliance on *Ogier* proper and that the Decree imposed on the WSSC a duty of inspection of its facilities, which it breached.

### Standard of Review

Maryland Rule 2-501(f) provides in relevant part:

**(f) Entry of Judgment.** The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. . . .

We review a trial court’s grant of a motion for summary judgment without deference. *Bd. of Cnty. Comm’n’s of St. Mary’s Cnty. v. Aiken*, 483 Md. 590, 616 (2023). “We conduct an independent review of the record to determine whether a general dispute of material facts exists and whether the moving party is entitled to judgment as a matter of law.” *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022). “‘We review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant.’” *Id.* (quoting *Md. Cas. Co. v. Blackstone Int’l, Ltd.*, 442 Md. 685, 694 (2015)). “‘If no material facts are in dispute,

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<sup>11</sup> For the first time on appeal, Mr. Backus contends that the circuit court erred in ruling on the motion for summary judgment when it did because it previously had extended the deadline for discovery beyond the date when it held a hearing on the motion, thereby denying him an opportunity to develop the record further. We decline to address this claim because it was not raised in the initial brief. *Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241-42 (2004) (stating that it is “impermissible” for an appellant “to hold back the main force of an argument to a reply brief and thereby diminish the opportunity of the appellee to respond to it”).

we determine whether the trial judge’s ruling was legally correct. Ordinarily, we may affirm the trial court only on the grounds upon which the trial court relied in granting summary judgment.” *Id.* (quoting *Newell v. Runnels*, 407 Md. 578, 608 (2009)).

### **Analysis**

“In Maryland, to succeed on a negligence claim, a plaintiff must prove four well-established elements: (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant’s breach of the duty.” *Wash. Metro. Area Trans. Auth. v. Seymour*, 387 Md. 217, 223 (2005) (citations and quotation marks omitted). “As a general rule, a municipality<sup>[12]</sup> has a duty to maintain its public works in good condition.” *Colbert v. Mayor & City Council of Balt.*, 235 Md. App. 581, 588 (2018) (citing *Smith*, 156 Md. App. at 383). “That duty is not absolute, however, and the municipality is not an insurer.” *Id.* “If an entity is injured because the municipality failed to maintain its public works and the municipality had actual or constructive notice of the bad condition that caused the damage, the municipality may be held liable in negligence.” *Id.* Accordingly, to succeed in his negligence claim against the WSSC, Mr. Backus was required to show that the WSSC had either actual or constructive notice of the missing water meter cover.

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<sup>12</sup> Neither party disputes that the WSSC, a bi-county agency charged with providing water and sewage service in Prince George’s and Montgomery Counties, Md. Code (1998, 2020 Repl. Vol.), Public Utilities Article, § 17-101; 1918 Md. Laws, ch. 122, is treated like a municipality for purposes of premises liability.

Actual notice means precisely what it says.<sup>13</sup> There are no facts before us indicating that the WSSC had actual notice of the dangerous condition prior to Mr. Backus’s fall, nor does he contend otherwise. We thus turn to whether there was a triable issue of constructive notice.

“Constructive notice is notice that the law imputes based on the circumstances of the case.” *Id.* (citing *City of Annapolis v. Stallings*, 125 Md. 343 (1915)). ““A municipality is charged with constructive notice when the evidence shows that -- as a result of the nature of a defective condition or the length of time it has existed -- the municipality would have learned of its existence by exercising reasonable care.”” *Id.* (quoting *Hartford Cas. Ins. Co. v. City of Balt.*, 418 F. Supp. 2d 790, 793 (D. Md. 2006) (citation and quotation marks omitted)).

Initially, we observe that the Consent Decree is a red herring and, as the WSSC contends, has no relevance to this case. By its own terms, the purpose of the Consent Decree was to compel the WSSC to take the actions necessary to ensure that its wastewater collection system complied with federal and state environmental regulations. As pointed out in the affidavit (attached to the WSSC’s reply to Mr. Backus’s opposition to the motion for summary judgment) of Glen Diaz, a WSSC civil engineer:

The water distribution system is a closed system.  
Likewise, the sanitary sewer system, commonly referred to as

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<sup>13</sup> We have defined actual notice “as ‘knowledge on the part of the corporation, acquired either by personal observation or by communication from third persons, of that condition of things which is alleged to constitute the defect.’” *Colbert*, 235 Md. App. at 588 (quoting McQuillin, *The Law of Municipal Corporations*, § 54:176 (3d ed., July 2017 update)).

the wastewater collection system, is a separate and distinct closed system. The water distribution system does not cross-connect with the wastewater collection system in the [Washington Suburban Sanitary District (WSSD)].

Furthermore, the term “Collection System” in the Consent Decree is defined as “the collection and conveyance system (including all pipes, Force Mains, Gravity Sewer Segments, overflow structures, regulators, pump stations, manholes, and components thereto) owned by WSSC and located within the WSSD on the Date of Lodging of this Consent Decree, and designed to store and/or convey sewage to a wastewater treatment plant.” Plainly, as Mr. Diaz averred, the “Consent Decree does not apply to the water distribution system.” The hole into which Mr. Backus fell was part of the water distribution system, not the wastewater collection system. We reject Mr. Backus’s contention that the Consent Decree imposed on the WSSC a heightened duty to conduct inspections of its water distribution system.

We furthermore agree with the WSSC that *Ogier* has no application to this case for the simple reason that it is contrary to Maryland law. *Compare Ogier*, 459 P.3d at 371 (stating that the “plaintiff is excused from proving notice when the City should have reasonably anticipated that the condition would develop”), *with Maans*, 161 Md. App. at 636-40 (rejecting the “mode of operation” rule followed in twenty-one other states, including Washington, as contrary to binding Maryland appellate decisions). As we noted in *Maans*, “Doing away with the requirement that the invitee must prove how long the dangerous condition existed pre-injury is the functional equivalent of doing away with the

requirement that the plaintiff prove that the defendant’s negligence was the proximate cause of the plaintiff’s injury.” *Id.* at 640.

In this case, the only evidence before the circuit court was that, as Mr. Backus testified in his deposition, the water meter cover plate was present the night before the accident but was missing on the day of the accident. Moreover, once the WSSC was notified that the cover plate was missing, it promptly sent a work crew to install a new cover plate. These circumstances are vastly different than those in *Keen*, where there was testimony<sup>14</sup> that the dangerous condition had existed for a sufficient time that it had “become known and notorious to those traveling the streets.” 93 Md. at 39.

Because Mr. Backus presented no evidence to show that the WSSC had either actual or constructive notice of the missing water meter cover plate in sufficient time to alleviate the hazardous condition,<sup>15</sup> he cannot show that the WSSC was negligent. The circuit court did not err in granting the WSSC’s motion for summary judgment.

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<sup>14</sup> In *Keen*, the Supreme Court of Maryland noted that several witnesses had testified “to the existence and character of the hole” and that, according to those witnesses, there had been a hole in a public street for several weeks prior to Keen’s fall, which occurred “on a dark night.” *Keen*, 93 Md. at 38-39.

<sup>15</sup> In passing, we note that the trash and debris found in the open hole into which Mr. Backus fell does not permit a rational inference as to how long the cover plate was missing. Prior to December 14, 2018, the water meter at 9213 Baltimore Avenue was read manually. Thus, prior to that date, the cover plate was removed periodically for as many years as there was water service at that address, which undoubtedly was for many decades. It is impossible to ascertain when the trash and debris fell into the hole or whether it accumulated over many years, and its existence does not permit a reasonable factfinder to impute knowledge of the open hole to the WSSC prior to Mr. Backus’s fall.

(continued)

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**

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We further agree with the WSSC that it did not “delegate” its duty to maintain its facilities by relying upon citizens’ reports of hazardous conditions such as the missing water meter cover plate. There are thousands of such cover plates in public places that are not within the exclusive possession or control of the WSSC. It is eminently reasonable for it to rely upon receiving notice from property and business owners, travelers, and pedestrians when they encounter a hazardous condition. *See, e.g., Smith*, 156 Md. App. at 385 (noting that *Keen* “does not impose a duty on municipalities to conduct regular inspections of their roadways”); *id.* at 386 (stating that “[w]hether the municipality performs routine inspections or relies on citizens’ reports to discover ‘bad conditions,’ it cannot avoid notice by turning a blind eye”).