Circuit Court for Baltimore City
Case No. 24-C-17-004804

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2479

September Term, 2018

ARGENTINE S. CRAIG

v.

MAYOR AND CITY COUNCIL OF BALTIMORE CITY

Leahy,
Friedman,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: January 3, 2020

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104

This appeal arises from an order of the Circuit Court for Baltimore City granting summary judgment in favor of appellees, the Mayor and City Council of Baltimore City (the "City"). Appellant, Argentine Craig, filed a lawsuit against the City for negligence after she tripped and fell over an elevated sidewalk. The City filed a Motion for Summary Judgment and appellant then filed a response in opposition. On August 22, 2018, the court held a hearing and granted the City's motion for summary judgment. This timely appeal followed, and appellant presents the following questions for our review, which we have rephrased slightly, as follows:[1]

1. Did the circuit court err in granting the City's motion for summary judgment because of its determination that the defect was trivial, and thus, the City was not liable?

2. Did the circuit court err in granting the City's motion for summary judgment because appellant did not produce evidence that, prior to her fall on February 23, 2017, the City had actual or constructive notice that the sidewalk was defective?

[1] Before rephrasing, appellant's question were presented as follows:

1. Whether the municipality is liable for the appellant's injuries caused by a hazardous walkway condition when the municipality or its agents had actual notice the condition or which condition had existed long enough to give constructive notice of its existence.

2. Whether the facts presented relating to the question of notice was sufficient to raise a genuine issue of material dispute.

3. Whether the court erred in granting summary judgment where an issue of fact existed as to the whether the Municipality should have known of a hazardous condition based on the length of time that the hazardous condition existed

BACKGROUND

On February 23, 2017, while walking along a sidewalk on the eastside of Hanover Street in Baltimore City, appellant tripped and fell on an elevated portion of the sidewalk, causing injuries to her face and mouth. Appellant incurred $15,779 in bills for medical treatment, including orthodontic surgery to repair damage to her teeth. She was 80 years old at the time of the incident.

Appellant filed a complaint on September 27, 2017, alleging the City negligently attempted to repair the sidewalk, and as a result the sidewalk was uneven. Appellant further alleged the City had constructive notice of the sidewalk's condition but failed to adequately remedy the problem. The City filed an answer on November 13, 2017, denying all allegations.

On June 20, 2018 a deposition was conducted, during which, appellant testified she was walking down Hanover street, towards Lombard street to deliver voter registration materials to the Department of Elections. She stated, "I tripped on an uneven sidewalk. I mean, I – I just tripped, fell forward, tried to break my fall with my arm, and – and my face hit the sidewalk and chipped my teeth. And I didn't know what the damaged was at that point, but, yeah. But I was bruised [sic] chin and face and teeth and arm and, yeah." She also testified she did not see that the sidewalk was uneven, as she was not looking down as she walked. She further testified that she had walked over that same area of the sidewalk "at least more than a dozen times" before and she hadn't noticed the defective sidewalk. This was the first time she tripped over that portion of the sidewalk.

On July 25, 2018, during a deposition, Ronald Jenkins, an inspector with the City of Baltimore Department of Transportation, testified that he has worked for the City for 29 years and he has been an inspector since 2012. His role is to "basically manage the 311 system and do law cases and full block inspections that are assigned through the mayor's office," such as when "council people might . . . put in complaints." Jenkins was shown photographs of the area where appellant fell, and based on the photographs, he testified that the sidewalk was raised approximately one and a half to two inches. He stated that portion of the sidewalk was elevated high enough to be considered a "trip hazard." Further, he explained that the elevation of the sidewalk was probably due to the roots of the trees lifting the sidewalk, because there are "trees up and down [the] block" and "that's what causes cracks and stuff" in the sidewalk. Jenkins was shown a photograph of what he believed to be a metal grate that is typically put around trees, however the tree was missing in this photo. Jenkins testified that he did not know what happened to the tree, stating, "it might have died or it might have fell over. They might have removed it. I don't know." Further, he testified that removing the tree is the responsibility of the Forestry Department and that he doesn't "know too much about the operation of Forestry."

Jenkins testified also that the City does not routinely require inspectors to "go out and canvas the city" for sidewalk damage or hazards and that the "only time [they] go out is when [they] get a complaint." He stated that, at his supervisor's request, he inspected the area of appellant's fall, however, he could not recall the date of the inspection. First, Jenkins testified that he "went out and inspected [the area] and wrote [it] up the same day."

When asked when he conducted the inspection, Jenkins stated, "I think it was January. I'm not sure of the date." When asked when he completed the inspection report, Jenkins noted that the date on the report was May 10, 2017. When questioned further about the timeline of the inspection, the following conversation ensued:

[Appellant's Counsel]:	Now, you said that you had an opportunity to look at the block. And earlier you had said January.
[Jenkins]:	I was speculating January. I can't remember the date. Speculating January.
[Appellant's Counsel]:	But you did the report – you did this report in May?
[Jenkins]:	Yeah. I got May on here. I think I went out in January. I think I did go out there in January.
[Appellant's Counsel]:	That would have been after the May or before January – the January before your May [20]17?
[Jenkins]:	This was January of 2017.
[Appellant's Counsel]:	You went out there 2017?
[Jenkins]:	I think it was January. It wasn't that warm and it wasn't too cold either. I remember that.

Thereafter, the City's counsel questioned Jenkins about the date of the inspection. He stated:

[Jenkins]:	I was speculating. I might have went out there in January and did an inspection on this. My date could be wrong. I'm not sure. But I remember going out there. It wasn't too cold and it wasn't too warm.
[City's Counsel]:	But you only went out there one time, correct?
[Jenkins]:	Yes. I went out there one time.
[City's Counsel]:	So can you say whether you went out there in May of 2017?

[Jenkins]:	No. I don't know. I can't remember.
[City's Counsel]:	All right.
[Jenkins]:	I can't remember.
[City's Counsel]:	I'm wondering if you're mentioning January because those pictures are marked as January 2018. Do you know why you mentioned January of 2017?
[Jenkins]:	I was speculating. I was looking at the picture and I remember it wasn't too warm and it – it was a little chilly. It wasn't real cold. But I remember it was kind of cold.

On July 16, 2018, the City filed a Motion for Summary Judgment alleging there was no genuine dispute of material fact because no evidence was presented to show that the City had actual or constructive notice of any defective condition of the sidewalk prior to appellant's fall. Appellant filed a response in opposition on August 15, 2018 and a hearing was held on August 22, 2018. In granting the City's motion for summary judgment, the trial judge stated:

> And the court is going to find that summary judgment is certainly in order in this matter, and that based on the Martin case, that there's no defect that you all would – this is a defect that is sort of like common, but you can't be expected to know all of the defects that are on the street.
>
> As well as – there's – as far as notice is concerned, you all were not – had any – no actual notice of it as well as there was not any notice that is deemed to be constructive notice that I have heard in this particular incident, that the defect, if it were, was not something that was known and notorious.

This timely appeal followed.

STANDARD OF REVIEW

The determination of "whether a trial court's grant of summary judgment was proper is a question of law subject to de novo review on appeal." *Haas v. Lockheed Martin*

Corp., 396 Md. 469, 479 (2007). When reviewing a trial court's grant of summary judgment, the appellate court must "determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law." *Id.* Further, "we review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Id.*

DISCUSSION

I. The circuit court did not err in granting the City's motion for summary judgment because of its determination that the defect was trivial.

Appellant contends that the trial court erred in granting summary judgment because "the elevation was more than a trivial defect." Conversely, the City asserts, "the sidewalk defect at issue was so slight that it was non-actionable under the triviality doctrine, and even if the defect had been actionable, [appellant] failed to produce evidence that the City had notice of the defect and any opportunity to fix it before [appellant's] accident." We agree.

In determining a municipality's liability for negligence, Maryland courts have applied the doctrine of triviality, wherein alleged defects or obstructions in or on sidewalks that are "slight, minor or inconsequential" are not actionable. *Martin v. Mayor & Council of Rockville*, 258 Md. 177, 183 (1970) (citations omitted). In *Leonard v. Lee*, the Court of Appeals, applying the doctrine, affirmed the entry of a directed verdict in favor of Baltimore County. 191 Md. 426, 436 (1948). The County was sued by Leonard after she slipped and broke her hip on a portion of the sidewalk which became slippery through

wear. *Id.* at 429. In holding that the defect in the sidewalk was trivial, and thus, the County was not liable for negligence, the Court reasoned:

> The duty owed by a municipal corporation to those lawfully using the sidewalks under its control is not that of an insurer of their safe passage. Where there are dangerous obstructions or depressions of which the municipal authorities have actual notice or which have existed long enough to give constructive notice, a municipality is liable if a person is injured because of such condition. It is obvious that each case is different and, therefore, each case must stand upon its own particular facts, but this Court has differentiated between conditions which will render the municipality liable, and those which are the necessary concomitant of use over a period of time . . . While a municipality must generally respond in damages for injuries caused by its negligence, acts, or omissions especially in connection with the public streets and sidewalks under its care and control, there must be a limit to such liability, and it cannot be held responsible for injuries caused by every depression, difference in grade, or unevenness in sidewalks. No city, town, or village could maintain a perfectly level or even surface in all of its sidewalks without burdening the property owners with unreasonable and unnecessary taxation. No resident or visitor of a city, town, or village has the right to expect such conditions. Pavements will in time become irregular and uneven from roots of trees, heavy rains and snows, or other causes.

Leonard v. Lee, 191 Md. 426, 431 (1948) (quoting *Cordish v. Bloom*, 138 Md. 81, 84–85, 113 A. 578, 579 (1921)).

Similarly, in *Martin v. Mayor & Council of Rockville*, the Court of Appeals held that the City of Rockville was not liable for injuries sustained by Martin when she fell after catching her foot in a small depression approximately 4 1/2 inches wide, 7 inches long and 1 1/2 inches deep at the point where a curb apron was broken. 258 Md. 177, 178 (1970). In applying the triviality doctrine, the Court noted "[n]ot every defect in a sidewalk is actionable. For instance, slight inequalities are nearly always found, at one place or another, especially where there is much travel. Minor defects or obstructions are generally not actionable." *Id.* at 183 (quoting 19 McQuillin, Municipal Corporations § 54.80(c) (1967

Rev. Ed.). In finding the City not liable for negligence, the Court held "a municipality's liability must be limited so that it cannot be held responsible for every depression or irregularity. To hold it answerable for every difference in grade or uneven surface would impose an almost unsupportable burden on both the municipality and its taxpayers." *Id.* at 185.

In the case at bar, relying on *Martin*, the trial judge found that the defect "is sort of like common, but [the City] can't be expected to know all of the defects that are on the street." We agree. According to the record, appellant traveled across the disputed area of the sidewalk "at least more than a dozen times" prior to the incident and she did not notice a defect. Jenkins testified that the sidewalk was raised approximately one and a half to two inches. The slight elevation in the sidewalk was not an inherently dangerous condition. To the contrary, it was a trivial defect. Based on this record, the trial court did not err in granting the motion for summary judgment.

II. The circuit court did not err in granting the City's motion for summary judgment because appellant did not produce evidence that the City had actual or constructive notice that the sidewalk was defective.

Even if the elevation of the sidewalk was not a trivial defect, the circuit court did not err in granting the motion for summary judgment because appellant did not produce evidence that the City had actual or constructive notice that the sidewalk was defective.

Generally, a municipality has a duty to make its public streets and sidewalks safe for passage. *Smith v. City of Baltimore*, 156 Md. App. 377, 383 (2004). However, this "duty is not absolute and the municipality is not an insurer of safe passage." *Id.* If a "person is injured because a municipality failed to maintain its streets, and the municipality

had actual or constructive notice of the dangerous condition that caused the injury, the municipality may be held liable in negligence." *Id*

Constructive notice is "notice that the law imputes from the circumstances of the case." *City of Annapolis v. Stallings*, 125 Md. 343, 93 A. 974, 976 (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." *Hartford Cas. Ins. Co. v. City of Baltimore*, 418 F.Supp.2d 790, 793 (D. Md. 2006) (quoting *Smith*, 156 Md. App. at 386).

In the instant case, with regard to notice, the trial court stated:

> as far as notice is concerned, you all were not – had any – no actual notice of it as well as there was not any notice that is deemed to be constructive notice that I have heard in this particular incident, that the defect, if it were, was not something that was known and notorious.

Appellant, however, insists that the trial court erred in granting the motion for summary judgment because the City had actual or constructive notice of the hazardous walkway condition. Conversely, the City asserts that appellant "failed to produce evidence that the City had notice of the defect and an opportunity to fix it before [appellant's] accident." Appellant contends there is "both direct and circumstantial evidence showing that the defect had existed for a sufficient length of time; and both direct and circumstantial evidence showing the Municipality through its agent the [D]epartment of Forestry and the Housing [D]epartment permit office visited and knew of the location and condition of the

defect." To support this assertion, appellant noted several reasons why the City had notice of the condition of the sidewalk.

First, appellant noted that "Jenkins inspected the subject sidewalk for damage and determined that the damage was caused by an uplifting in the sidewalk resulting in a dangerous elevation in the sidewalk," which he described as a "trip hazard." Further, appellant noted that Jenkins testified that he recalled examining the sidewalk sometime in January 2017, which would have been prior to appellant's accident. While Jenkins did testify that he inspected the sidewalk on 100 South Charles Street where he discovered the sidewalk was lifting due to tree root damage, he also testified that he "went out and inspected [the location] and wrote [it] up the same day." However, after being shown the "Footway Violation Report" he testified that he was not sure when he conducted the inspection, that "[he] was speculating. [He] might have went out there in January and did an inspection [of the area]. [His] date could be wrong."

Viewing this evidence in the light most favorable to appellant, we hold appellant did not establish the City had actual or constructive notice of the sidewalk's condition. No definitive evidence was presented that the sidewalk was inspected prior to the accident or that the City should have known of its conditions. Thus, appellant failed to establish that the City had notice of the elevated sidewalk prior to the fall. Constructive notice could not have been implied because of the nature of the defect was trivial and there was no evidence as to when the defect was created.

Appellant also asserts, based on Jenkins' testimony that there was an empty tree grate on the sidewalk, that most likely the tree that once stood in that grate had been removed by the Forestry Department and because the Forestry Department is an agency of Baltimore City, the City had notice of the defective sidewalk. However, the Forestry Department did not testify or provide documentation, thus any conclusion in this regard would be mere speculation.

Finally, appellant contends "the City issued a permit for waterproofing at the trip hazard location on November 2, 2011, more than five years prior to [] [a]ppellant's fall incident. Which necessarily should have given rise to an inspection of the work performed and notice of the elevation in the sidewalk." Once again, to support this assertion appellant relies on testimony by Jenkins, where after being shown a photograph of "some gray stuff between the sidewalk and the building," he noted it looked like a sealant used so that "water [wouldn't] go down in the cracks," but other than describing the "gray stuff" as a sealant, Jenkins did not provide any details about waterproofing work performed in that location. Appellant further relied on a Baltimore Housing document issued on November 2, 2011 that described the plan as "interior work (365 SQ FT) – waterproof basement interior & replace drain tile as per code," located at 100 S Hanover Street.

Appellant, however, established no nexus between the inspection of interior waterproofing work and an inspection of the exterior sidewalk. Nor was there a connection between the Baltimore Housing document and the sidewalk. In sum, ruling that the City

did not have constructive or actual notice of the elevated sidewalk before appellant's fall, the trial court did not err in granting the City's motion for summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.