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Lila Kyllonen, Appellant, vs. City of Park Rapids, Respondent, Senior Citizens Center Board, Inc., of Park Rapids, Minnesota, Defendant.

C2-98-956

COURT OF APPEALS OF MINNESOTA

1998 Minn. App.

November 3, 1998, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

PRIOR HISTORY: Hubbard County District Court. File No. C6-97-294. Hon. John P. Smith.

DISPOSITION: Affirmed.

COUNSEL: Steven R. Peloquin, Peloquin & Minge, P.A., 15 N. Main, Box 277, New York Mills, MN 56567 (for appellant).

John E. Hennen, League of Minnesota Cities, 145 University Ave. W., St. Paul, MN 55103-2044 (for respondent).

JUDGES: Considered and decided by Shumaker, Presiding Judge, Crippen, Judge, and Klaphake, Judge.

OPINION BY: KLAPHAKE

OPINION

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Lila Kyllonen sued respondent City of Park Rapids (city) and the Senior Citizens Center Board, Inc. (center) after she fell on an icy sidewalk outside property owned by the center. The district court granted summary judgment to the city, concluding that the city either (1) owed no duty to Kyllonen; (2) was entitled to "snow and ice" immunity under *Minn. Stat. § 466.03, subd. 4* (1996); or (3) was entitled to statutory immunity under *Minn. Stat. § 466.03, subd. 6* (1996). The court denied the center's motion for summary judgment, determining that genuine issues of material fact [*2] ex-

isted; the center thereafter settled with Kyllonen and is not a party to this appeal.

On appeal, Kyllonen claims that the city was negligent because a catch basin located in an adjacent public alley was frozen over, causing melting snow and ice to pond and then flow or back-up onto the sidewalk outside the center where she fell. Because we conclude that the city is entitled to snow and ice immunity, we affirm solely on that basis and do not reach the alternative bases for summary judgment offered by the district court.

DECISION

Summary judgment is proper when no material issues of fact exist and either party is entitled to judgment as a matter of law. *Minn. R. Civ. P. 56.03*. On review of a grant of summary judgment, this court views the evidence in the light most favorable to the party against whom summary judgment was granted. *Bol v. Cole, 561 N.W.2d 143, 146 (Minn. 1997)*.

A municipality is immune from "any claim based on snow and ice conditions on any highway or public sidewalk * * * except when the condition is affirmatively caused by the negligent acts of the municipality." *Minn. Stat. § 466.03, subd. 4* (1996). At oral arguments, Kyllonen conceded that the [*3] public alley is a "highway or public sidewalk." Moreover, for the sake of argument, we assume that Kyllonen's claim is "based on snow and ice conditions." The issue thus becomes whether the condition was "affirmatively caused by the [city's] negligent acts." A mere omission on the city's part is not an affirmative act and does not subject it to liability. *Koen v. Tschida, 493 N.W.2d 126, 128 (Minn. App. 1992)* (county's failure to remove or trim pine trees that cause ice to form more readily on road not affirmative act of negligence precluding immunity), *review denied* (Minn. Jan. 28, 1993); *In re Heirs of Jones, 419 N.W.2d 839,*

841 (Minn. App. 1988) (county's decision not to salt road did not affirmatively cause slipperiness of road).

Kyllonen attempts to characterize the condition as arising from the city's affirmative act in letting the melting snow and ice flow past the center's front door and in failing to "catch it at the gates" by keeping the catch basin open. However, to allow snow and ice immunity to be circumvented by characterizing the city's act as a failure to clear the catch basin adequately would abrogate or nullify the effectiveness of [*4] that immunity. *See*

Jones, 419 N.W.2d at 841. Rather, "when weather is the true culprit, the government is immune." *Koen*, 493 N.W.2d at 128. Because the city's failure to open the catch basin was an omission and not an affirmative act, it is entitled to snow and ice immunity.

We therefore affirm the grant of summary judgment to the city based on snow and ice immunity.

Affirmed.