ILLINOIS COURT CASES RELATED TO HIGHWAYS AND HIGHWAY CONSTRUCTION

2023 PE BOOT CAMP

1

ILLINOIS COURT CASES RELATED TO HIGHWAYS AND HIGHWAY CONSTRUCTION

Dale Rasmussen, PE, PLS, MBA
County Engineer
Stephenson County
drasmussen@stephensoncountyil.gov
(815) 235-7497

Steve Judge,
Attorney at Law
Judge Law, llc
Sjudge@judgellc.com
(847) 962-2833

2

ILLINOIS COURT CASES RELATED TO HIGHWAYS AND HIGHWAY CONSTRUCTION

- Introduction – Our desire is to present cases that are relevant to your operations and to assist you in avoiding situations that will put you in litigation.
- 12 cases to cover
- Publication after they get to appellate level
- We will present:
  - Facts
  - What each side says
  - Other pertinent issues
  - Court rulings
- The appellate court will affirm, reverse or remand (or a combination of the above).

3

ILLINOIS COURT CASES RELATED TO HIGHWAYS AND HIGHWAY CONSTRUCTION

- What to take away from this seminar
  - Hicks v Pope County Board of Commissioners – is a section of road a public highway or private driveway
  - Chamness v Mays - Abandonment of a Highway
  - Crespo-Fregoso v City of Chicago – Liability for injury due to a pothole
  - DeMambro v City of Springfield – liability for defects in the roadway
  - Dycus v County of Edgar – liability for defects in the roadway during repairs
  - Robinson V Washington Township - liability for defects in the roadway during repairs

4

ILLINOIS COURT CASES RELATED TO HIGHWAYS AND HIGHWAY CONSTRUCTION

- What to take away from this seminar
  - Rowe v Town of Normal – who is the lowest responsible bidder
  - Brettman v Virgil Cook – Injury involving height of temporary traffic signals
  - Ball v Teng - are traffic control plans sufficient in the event of a drunken driver related fatality
  - Shank v Fields - liability during a lane closure on a holiday weekend.
  - Dinelli v. County of Lake – Injury at a mid-block bicycle crosswalk
  - Boub v Township of Wayne - liability for defects in the roadway during repairs

5

DEFINITIONS:

- De Novo - *a Latin term that means "anew," "from the beginning," or "afresh." When a court hears a case "de novo," it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case.*
- Directed verdict - *A directed verdict is a ruling entered by a trial judge after determining that there is no legally sufficient evidentiary basis for a reasonable jury to reach a different conclusion.*

6

2023 ISPE Boot Camp

DEFINITIONS:

- Summary judgment - *A procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law.*

7

2023 ISPE Boot Camp

DEFINITIONS:

- Proximate cause *refers to a thing that happened to cause something else to occur. This is usually brought up when something has gone wrong, such as an automobile accident in which someone was injured, and refers to the non-injured party's legal responsibility for the event.*

8

2023 ISPE Boot Camp

DEFINITIONS

- Tort - *A negligent or intentional civil wrong not arising out of a contract or statute. These include "intentional torts" such as battery or defamation, and torts for negligence.*

9

2023 ISPE Boot Camp

TORT IMMUNITY ACT

- (745 ILCS 10/2-201) (from Ch. 85, par. 2-201)
  Sec. 2-201. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.
  (Source: Laws 1965, p. 2983.)

10

2023 ISPE Boot Camp

HICKS V POPE

2023 IL App (5th) 220733-U

11

2023 ISPE Boot Camp

HICKS V POPE

Facts of the Case:

- GEORGIA HICKS, Plaintiff-Appellant
- THE POPE COUNTY BOARD OF COMMISSIONERS and THE POPE COUNTY HIGHWAY DEPARTMENT, Defendants-Appellees
- Scott A. Trovillion and Scott W. Trovillion, Intervening Defendants-Appellees.

12

2023 ISPE Boot Camp

HICKS V POPE

Facts of the Case:

- The plaintiff, Georgia Hicks, appeals the November 1, 2022, order of the circuit court of Pope County that granted summary judgment in favor of the intervening defendants, Scott A. Trovillion and Scott W. Trovillion

13

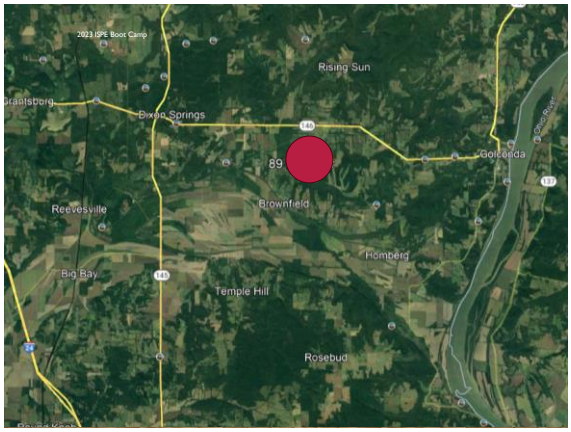
2023 ISPE Boot Camp

HICKS V POPE

Facts of the Case:

- On April 27, 2022, the plaintiff filed a verified complaint for declaratory judgment against the defendants, the Pope County Board of Commissioners (Board) and the Pope County Highway Department (Department), in the circuit court of Pope County.
- The plaintiff sought a declaration that she is the owner of the property described in the complaint and that she has an exclusive right to the use of the property located at 89 Hicks Road, Golconda, Illinois.

14



15

16

2023 ISPE Boot Camp

HICKS V POPE

Facts of the Case:

- The complaint further alleged that the plaintiff received a letter dated March 21, 2022, from the Pope County engineer, W. Brian Ziegler, that stated "*if she maintains her driveway as it currently exists, and as it has been for years, that she will be charged with a petty offense and fined pursuant to approval by the Pope County Board of Commissioners*."

17

POPE COUNTY HIGHWAY DEPARTMENT

March 21, 2022

Ms. Georgia Hicks
89 Hicks Drive
Golconda, IL 62938

Re: Hicks Road

Dear Ms. Hicks:

As we have discussed and I have written to you previously, Hicks Road is a prescriptive public right-of-way per the definition in 605 ILCS 5/2-202. This office, the Pope County Unit Road District, by 605 ILCS 5/9-117 is the highway authority having jurisdiction of said right-of-way. It is our understanding that you or your family caused obstructions to be placed in the Hicks Road right-of-way to intentionally deny there from full access to their property, specifically two cattle crossings, fencing immediately adjacent to those cattle crossings, and longitudinal fencing that drastically narrowed the road that was placed after 1989.

This office would very much like to cooperate with you in some way or come to an agreement that would be acceptable to your family and the local property owners allowing sufficient access. However, without cooperation or some agreement, the obstructions must be removed.

Our office has no choice but to provide notice, by this letter, that you have 10 days to remove the above noted obstructions. Non-removal of the obstructions could result in being charged a petty offense with a minimum fine of $50 to a maximum of $5000 for each offense and you could be fined $50 per day for every day that the obstructions are not removed.

If you have legal representation in this matter, please provide contact information to this office.

Sincerely,

W. Brian Ziegler, P.E.
Pope County Engineer

cc: Jason Olson, States Attorney

March 2022 letter to Hicks

2023 ISPE Boot Camp

18

HICKS V POPE

Facts of the Case:

- "As we have discussed and I have written to you previously, Hicks Road is a prescriptive public right-of-way per the definition in 605 ILCS 5/2-202.
- This office, the Pope County Unit Road District, by 605 ILCS 5/9-117 is the highway authority having jurisdiction of said right-of-way.

19

HICKS V POPE

Facts of the Case:

- It is our understanding that you or your family caused obstructions to be placed in the Hicks Road right-of-way hindering others from full access to their property, specifically two cattle crossings, fencing immediately adjacent to those cattle crossings, and longitudinal fencing that drastically narrowed the road that was placed after 1989.

20

POPE COUNTY HIGHWAY DEPARTMENT

February 10, 2022

Ms. Georgia Hicks
c/o Attorney John R. Schneider
Johnson, Schneider & Ferrell, LLC
212 North Main Street
Cape Girardeau, MO 63701
Via email: attorneyschneider@hotmail.com

Re: Hicks Road

Dear Mr. Schneider:

Our office has determined that the roadway known as Hicks Road is a prescriptive public right-of-way per the definition in 605 ILCS 5/2-202. The facts were presented to the County Board of Commissioners last Tuesday night and they publicly agreed with the finding. Enclosed herewith you will find correspondence from the Illinois Department of Transportation noting jurisdiction since 1964. Today, there still are multiple landowners that use this road for access.

You will also find enclosed herewith a 1989 determination by then Road Commissioner Aubrey Jeffords. Although I've been told this determination was dismissed on a technicality, the information in the determination provides useful information. Mr. Jeffords describes the roadway width and the two cattle crossings. He notes that the cattle crossings are obstacles that need to be removed along with the fencing immediately adjacent to those cattle crossings.

It is the opinion of this office that the widths described in that determination is the best evidence we have as to the roads right-of-way width. There is some old fencing on the west side of the road that should verify Mr. Jeffords findings. However, a new fence was constructed along the west side of the roadway since that determination that narrows the roadway significantly.

This office has determined that the two cattle crossings, the immediate adjacent fencing, and the fencing drastically narrowing the roadway that was placed after 1989 are obstacles and should be removed per 605 ILCS 5/9-117. We have been told that the Hicks family placed these obstacles.

February 2022 letter to Hicks

21

HICKS V POPE

Defendants' Pleas:

- The defendants filed affidavits from the following individuals in support of the motion for summary judgment:
  - (1) Mitchell R. Garrett—a licensed professional land surveyor,
  - (2) Scott W. Trovillion,
  - (3) Murray Schuchardt,
  - (4) Mike Benard,
  - (5) Tom Taylor, and
  - (6) W. Brian Ziegler—Pope County highway engineer.

22

HICKS V POPE

Defendants' Pleas:

- The motion for summary judgment alleged that there is no genuine issue of material fact that Hicks Road a/k/a Hicks Drive is a public highway pursuant to section 2-202 of the Illinois Highway Code and as such, the plaintiff's complaint for a declaratory judgment requesting a finding that she has the exclusive right to control the route at issue must fail.
- The defendants rely on the affidavits filed in support of their motion for summary judgment to establish the route in question is a public highway.

23

HICKS V POPE

The affidavit of Mitchell Garrett stated :

- That he is a licensed professional land surveyor with over 40 years of experience.
- Garrett's affidavit was supported by approximately 260 pages of exhibits that he relied upon:
  - (1) Pope County Plat Book 2000 (T.13S.-R.6E),
  - (2) Pope County Plat Book 2013 (T.13S.-R.6E),
  - (3) Pope County Plat Book 2018 (T.13S.-R.6E),
  - (4) United States Geological Survey (USGS)—Brownfield 1917 topographical map,
  - (5) USGS—Brownfield 1917—Reprinted 1937 topographical map,

24

HICKS V POPE

The affidavit of Mitchell Garrett stated :

- Garrett's affidavit was supported by approximately 260 pages of exhibits that he relied upon:
  - (6) USGS—Brownfield 1917—Reprinted 1943 topographical map,
  - (7) Illinois Department of Public Works & Buildings (IDOPWB)—Pope County traffic map 1937,
  - (8) USGS—Brownfield 1962 topographical map,
  - (9) USGS—Brownfield 1962—photo inspected 1976 topographical map,
  - (10) USGS—Waltersburg 1962 topographical map,

25

HICKS V POPE

The affidavit of Mitchell Garrett stated :

- Garrett's affidavit was supported by approximately 260 pages of exhibits that he relied upon:
  - (11) USGS—Waltersburg 1962—photo inspected 1976 topographical map,
  - (12) IDOPWB—Pope County Highway Map 1964—Revised 1967,
  - (13) Illinois Department of Transportation (IDOT)—Pope County Highway Map 1971,
  - (14) USGS—Paducah, KY-IL 1986 topographical map,
  - (15) USGS—Brownfield 1996 topographical map, and
  - (16) USGS—Waltersburg 1996 topographical map.

26

HICKS V POPE

Garrett's Professional Opinion:

- *"In my professional opinion based upon my experience, education, and the public documents examined, including information from USGS topographic maps, Illinois Department of Public Works Maps, IDOT Map, and relying on the published Pope County Plat Books for 2000, 2013, and 2018, and other evidence on the ground, Hicks Drive a/k/a Hicks Road is a public highway pursuant to the relevant statutes, and not a private driveway."*

27

HICKS V POPE

The affidavit of Scott W. Trovillion stated that :

- he had regularly used the entire length of Hicks Drive from the mid-1960s until 2022.
- He used the route in the mid-1960s to visit his grandparents whose residence was accessed using Hicks Drive.
- He has used Hicks Drive since the early 1970s for cattle and hay production.
- He used Hicks Drive to access property owned by his family, and part of which he now owns, over the course of 2018 through 2022.

28

HICKS V POPE

The affidavit of Murray Schuchardt stated that:

- He had regularly used Hicks Drive from 1962 until the present time.
- He used Hicks Drive to access property for the purposes of hunting, fishing, carpentry, maintenance, and repairs.

29

HICKS V POPE

The affidavit of Mike Benard stated that:

- He had regularly used Hicks Drive to access property since 1983.
- He used Hicks Drive for the purpose of mowing and bush hogging land located at the southern end of Hicks Drive from 1983 through 2007.
- He used Hicks Drive when he worked for IDOT and oversaw the addition of gravel and blading of Hicks Drive.

30

HICKS V POPE

The affidavit of Tom Taylor stated that:

- He had used Hicks Drive to access property since 1978.
- He stated: "I worked for Southeastern Illinois Electric Cooperative, Inc. from 1978 to approximately 2009, where I would use Hicks Drive a/k/a Hicks Road to perform service and maintenance on the power grid and electric line, and emergency power restoration on the properties located along Hicks Drive a/k/a Hicks Road as far south as Scott W. Trovillion's property at the southern end of Hicks Drive a/k/a Hicks Road."

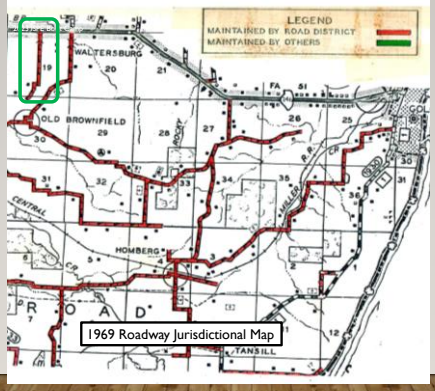
31

HICKS V POPE

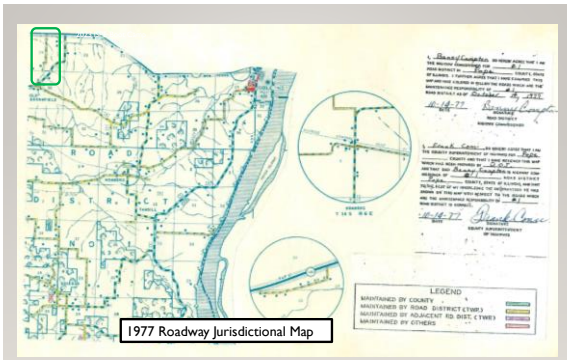
The affidavit of W. Brian Ziegler stated that:

- He was the Pope County highway engineer.
- Exhibit A to Ziegler's affidavit was the map of road maintained by the "#1 Road District in Pope County, Illinois" as of December 31, 1964.
- Exhibit B to Ziegler's affidavit was the 1969 #1 Road District Map."
- Exhibit C to Ziegler's affidavit was the 1977 "#1 Road District Map."
- Exhibit D to Ziegler's affidavit was the IDOPWB General Highway Map from 1943.

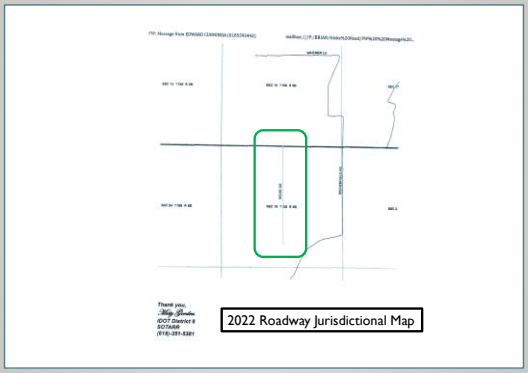
32



33



34



35

HICKS V POPE

Plaintiff Hicks Affidavit stated:

- She has lived at 89 Hicks Drive since 1973.
- The property was purchased by her late husband from the former owner, Mamie Rexer.
- The current driveway on the property began as a dirt track, put in by the owners of the property in the 1920s, as access to their home and farmland.
- The dirt track was on properties owned by the Rexer-Walter family who put in the dirt track.

36

HICKS V POPE

Plaintiff Hicks Affidavit stated:

- In or about 1928, the State of Illinois made the dirt road running along the Plaintiffs property line, between Section 18 and Section 19, into the paved road now known as Route 146.
- In the 1970s, after purchasing the property, my late husband, Phillip Hicks, and I improved the dirt track into a gravel driveway, and the two of us have maintained that driveway from that time to the present date.

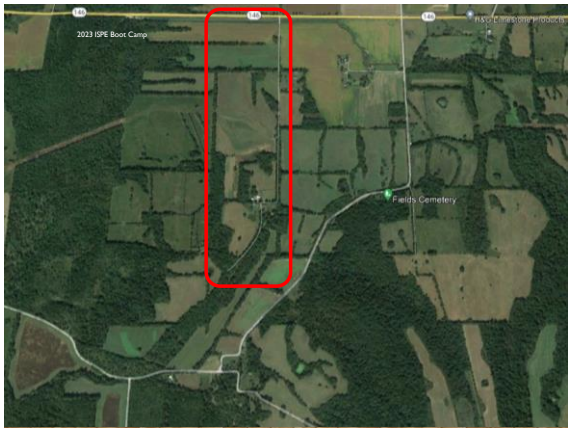
37

HICKS V POPE

Plaintiff Hicks Affidavit stated:

- My late husband and I have continually graveled the entire 1 1/2 miles of the driveway since it was improved in or about 1973, and have maintained, ditched, graded, installed culverts, trimmed trees, and cleared snow for the entire length of the driveway for the past 49 years.
- Said driveway travels from Route 146 for one mile to the house in which I reside, and from my house another 1/2 mile to an abandoned house which is the property now owned by the Intervening Defendants.

38



39

HICKS V POPE

Plaintiff Hicks Affidavit stated:

- I own the land on either side of this driveway and use the driveway exclusively to access my property.
- The driveway on my property has been in use exclusively for access to the land owned by the persons using that driveway and has never been a public road or used by the State of Illinois or Pope County as a public road."

40

HICKS V POPE

Plaintiff Hicks Affidavit stated:

- The plaintiff's affidavit also stated that she had expended money to maintain Hicks Drive, and that Pope County did not do anything to maintain or improve the driveway in question.

41

HICKS V POPE

Court Rulings:

- On appeal, the plaintiff raises one issue:
- "Did the Trial Court err in its ruling granting Summary Judgment on behalf of the Defendants, Pope County Board of Commissioners and Pope County Highway Department, and the Intervening Defendants, Scott A. Trovillion and Scott W. Trovillion in deciding that the Plaintiff's driveway was a public road?"

42

HICKS V POPE

Court Rulings:

- The plaintiff's mere allegation that the circuit court's decision was error without any argument or citation to authority falls short of what is required under Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020), "which our supreme court has stated is not a mere suggestion but has the force of law." *In re Marriage of James*, 2018 IL App (2d) 170627, ¶ 37, 422 Ill. Dec. 982, 104 N.E.3d 549 (citing *Rodriguez v. Sheriff's Merit Comm'n*, 218 Ill. 2d 342, 353, 843 N.E.2d 379, 300 Ill. Dec. 121 (2006)).

43

HICKS V POPE

Court Rulings:

- We conclude that the plaintiff has forfeited this issue for review.
- For the foregoing reasons, we affirm the November 1, 2022, amended order of the circuit court of Pope County.
- Ruled for the defendants.

44

CHAMNESS V. MAYS

IL App (5th) 130381 (2014)

45

CHAMNESS V. MAYS

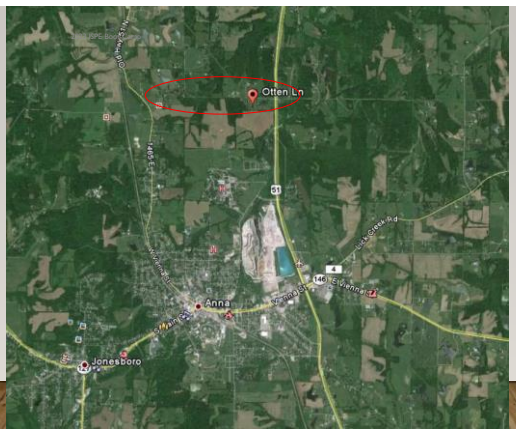
- Facts of the case:
  - Robert L. Chamness, Richard Tweedy, and Beverly Tweedy, are Plaintiffs-Appellants
  - Allen Mays, Janean Mays, and Union County, Illinois are Defendants-Appellees.
  - The Plaintiffs maintain that the disputed portion of Otten Lane was abandoned by Union County and is no longer a public highway.
  - The Defendants assert that the road was not abandoned and that it remains a public highway.
  - The trial court granted the Defendants' motion for summary judgment.
  - Plaintiffs appealed.

46

CHAMNESS V. MAYS

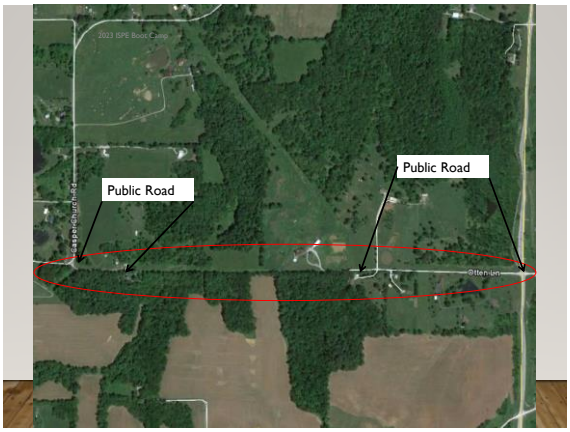
- Facts of the case:
  - This appeal relates to a small portion of Otten Lane located in Union County.
  - Otten Lane is a gravel, east-west road. Portions of Otten Lane indisputably remain public roadway.
  - It is undisputed that Otten Lane is a public roadway from New Route 51 on the east to the Tweedy mailbox on the west.
  - It is also considered a public roadway from Casper Church Road on the west to the Treece property on the east.
  - The portion in dispute is approximately ½ mile long

47

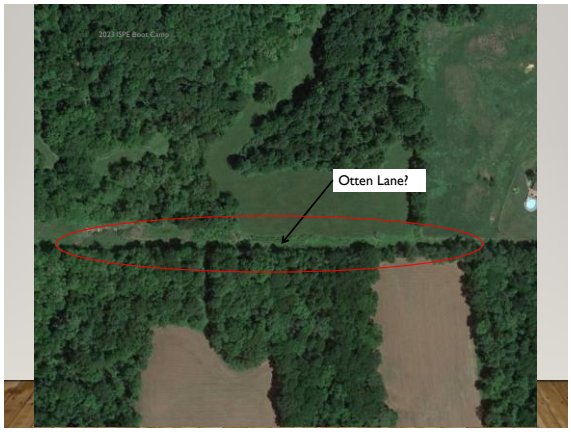


48

49



50

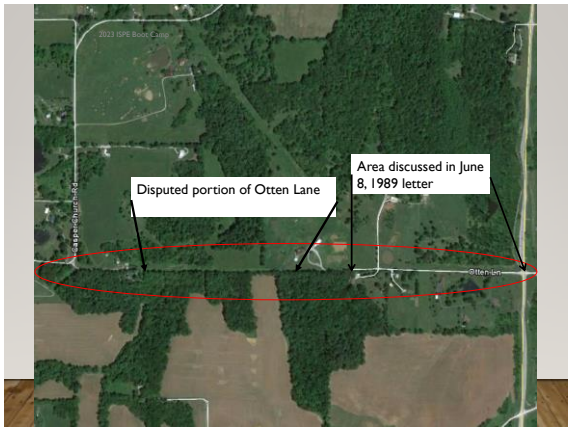


51

CHAMNESS V. MAYS

- Facts of the case:
  - Union County ceased maintaining the disputed portion of Otten Lane in the 1960s.
  - In 1964 Union County stopped collecting MFT for the disputed portion of Otten Lane.
  - Over the years the disputed portion of the road has become overgrown with brush and trees.
  - On June 8, 1989, Thomas Gilchrist, Union County superintendent of highways, wrote a '*to whom it may concern*' letter in which he stated that he reviewed the road and certified that it was public from New Route 51 to the driveway of Earl Thompson.

52



53

CHAMNESS V. MAYS

- Facts of the case:
  - In April 1993, the Tweedys purchased their 21 acre property.
  - Their property sits alongside the beginning of the disputed portion of Otten Lane.
  - Richard Tweedy testified that he bought the land because it was a dead-end road.
  - Beverly Tweedy stated because their road was a dead end, she believed the disputed portion was not a public road.

54

CHAMNESS V. MAYS

- Facts of the case:
  - In 2001, Defendant Brown received a five-acre parcel of land along the disputed portion of Otten Lane and bordering the Tweedys' property.
  - The only roadway which accesses the Defendants' property is the disputed portion of Otten Lane.
  - Shortly after acquiring the land, Defendant Allen Mays met with the Plaintiffs about his intent to build a home on the property and about providing access to the new home.

55

CHAMNESS V. MAYS

- Facts of the case:
  - Within days of the meeting between the Plaintiffs and the Defendants, Allen Mays started work clearing the disputed portion of Otten Lane.
  - A contractor bulldozed the roadbed and put down gravel.
  - The contractor called Allen and informed him that the Plaintiffs objected to the heavy equipment being there and the work being done on the roadway.

56

CHAMNESS V. MAYS

- Facts of the case:
  - Bill Boyd testified by discovery deposition.
  - He stated that he was the Union County engineer from 1989 through 2009.
  - As county engineer he investigated the dispute over Otten Lane.
  - He discovered that from the 1800s through 1962 Otten Lane had been maintained by the Union County highway department.
  - MFT had been spent on the road through 1964
  - No vacations were filed on that road either at IDOT or in the Union County clerk's office.

57

CHAMNESS V. MAYS

- Facts of the case:
  - Mr. Boyd testified that he went to the abstractor who provided him with the deeds for the properties in the disputed area.
  - He found that in the conveyances of the properties, the properties were considered to abut a public road.
  - He testified that the portion of Otten Lane that had not been maintained by the county since 1964 was overgrown with brush.

58

CHAMNESS V. MAYS

- Facts of the case:
  - Mr. Boyd testified that the fact that a county roadway had fallen into disrepair does not mean that it was abandoned as a public roadway by the county and does not mean that the county can no longer maintain it.
  - He further stated that if a county road has fallen into disrepair, adjoining landowners cannot take over the road and prohibit others from using it.
  - He found that there has never been a formal abandonment of the roadway by the county.

59

CHAMNESS V. MAYS

- Facts of the case:
  - Mr. Boyd testified that he was aware of the letter written by Thomas Gilchrist at the time he made his findings of fact.
  - He stated that he did not agree with the letter.
  - Mr. Boyd stated that, as far as he knew, Mr. Gilchrist, as Union County superintendent of highways, never vacated any roads; he just stopped maintaining them.

60

CHAMNESS V. MAYS

- Facts of the case:
  - On November 21, 2006 Bill Jackson, chairman of the Union County board sent a letter to landowners stating that it had determined that Otten Lane had never been vacated and that access to the road could not be denied.
  - On November 21, 2007, the Plaintiffs filed a complaint for injunctive relief enjoining the defendants from asserting any right, title, or interest in the disputed portion of Otten Lane.
  - On February 1, 2008, the Defendants filed a motion to dismiss.

61

CHAMNESS V. MAYS

- Facts of the case:
  - On February 15, 2008, the Plaintiffs filed a second amended complaint.
    - Count I – to enjoin Union County from asserting any right, title or interest in the disputed portion of Otten Lane.
    - Count II – to enjoin the Mays from entering the disputed portion of Otten Lane.
    - Count III – a claim against the Mays for trespass
    - Count IV – a claim to quiet title
    - Count V – a claim for declaratory judgment.

62

CHAMNESS V. MAYS

- Facts of the case:
  - In May 2008, the Defendants filed a motion to dismiss.
  - On April 12, 2010, the court denied the Defendants' motion to dismiss the second amended complaint.
  - On February 28, 2011, the Defendants filed an answer to the Plaintiffs' second amended complaint and a counterclaim.
  - The counterclaim was premised on the assertion that the disputed portion of Otten Lane retained its character as a public roadway and that access to it could not be denied.

63

CHAMNESS V. MAYS

- Facts of the case:
  - On August 26, 2011, the Defendants filed a motion for summary judgment.
  - On July 6, 2012, the Plaintiffs filed a motion for summary judgment and a response to the Defendants' motion for summary judgment.

64

CHAMNESS V. MAYS

- Facts of the case:
  - On March 12, 2013, the court entered an order granting the Defendants' motion for summary judgment.
  - It found that there was no evidence that Otten Lane was ever vacated.
  - It found that the evidence established that the disputed portion of Otten Lane had not been maintained by Union County or used as a roadway since approximately 1964.
  - It found that the road was overgrown with trees and brush.

65

CHAMNESS V. MAYS

- Facts of the case:
  - It found that no MFT funds are received on the roadway.
  - The roadway is not listed as a road in the IDOT highway and road maps.
  - It held that nonuse of a roadway alone is insufficient to establish an intent of abandonment.
  - It held that Mr. Gilchrist's letter does not state that any portion of Otten Lane had been abandoned.

66

CHAMNESS V. MAYS

- Facts of the case:
  - It merely stated that a portion of the road is public.
  - The court found that the Defendants' property is landlocked.
  - The court granted the Defendants' motion for summary judgment.
  - The Plaintiffs filed a timely notice of appeal.

67

CHAMNESS V. MAYS

- Appellate Court Rulings:
  - An established public highway does not lose its character as a public road unless it is either:
    - vacated by the authorities in the manner prescribed by statute or
    - abandoned.
  - Nonuse of the road alone is insufficient to establish abandonment by the public.
  - **Abandonment will be found only where the public has acquired the legal right to another road or where the necessity for the road has ceased to exist.**

68

CHAMNESS V. MAYS

- Appellate Court Rulings:
  - The disputed portion of Otten Lane is a public roadway.
  - It was not abandoned by the public because the presumed necessity for the disputed portion of the road had not ceased to exist and there was no alternate route.
  - We affirm the trial court's order granting the Defendants' motion for summary judgment.

69

CRESPO V CHICAGO

2021 IL App (1st) 200972

70

CRESPO V CHICAGO

Facts of the case:

- LILIAN CRESPO-FREGOSO, Plaintiff-Appellant,
- THE CITY OF CHICAGO, Defendant-Appellee.
- Appeal from the Circuit Court of Cook County, No. 19-L-0179

71

CRESPO V CHICAGO

Facts of the case:

- Plaintiff, Lilian Crespo-Fregoso, fell in a pothole and injured herself while crossing a service drive next to her home.
- Plaintiff filed suit against the City of Chicago (City), alleging that the City's negligent failure to maintain the service drive proximately caused her physical and financial injury.
- The circuit court entered summary judgment in favor of the City on plaintiff's claim, holding that the City did not owe plaintiff a duty to maintain the service drive because plaintiff was not an intended and permitted user of the service drive at the time she was crossing.

72

2023 ISPE Boot Camp

CRESPO V CHICAGO

Facts of the case:

- On January 7, 2018, plaintiff was traveling in her vehicle with her husband and daughter near 2158 North Central Avenue in Chicago.
- At that location, Central Avenue runs northbound and southbound.
- Adjacent to the southbound traffic lane is a one-block service drive.
- The service drive is to the west of southbound Central Avenue, with a grassy median between it and southbound Central Avenue.

73

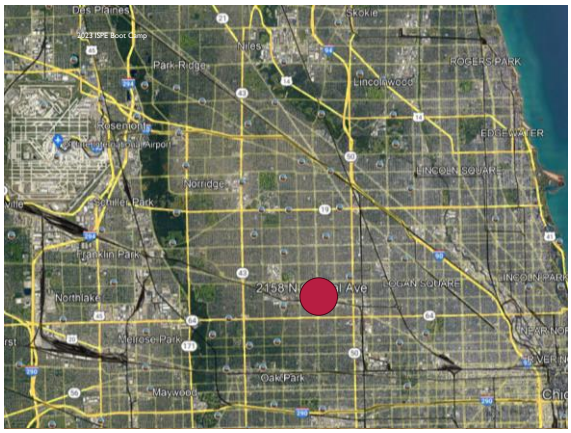
2023 ISPE Boot Camp

CRESPO V CHICAGO

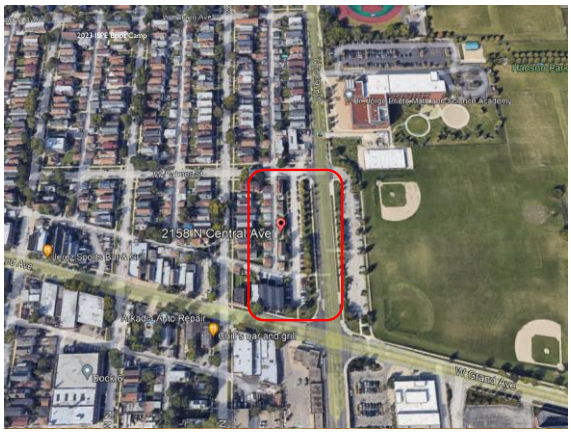
Facts of the case:

- There is a sidewalk on the grassy median closest to southbound Central Avenue, between the service drive and Central Avenue.
- This sidewalk ends midblock.
- Vehicles park on the east and west sides of the service drive.

74



75



76

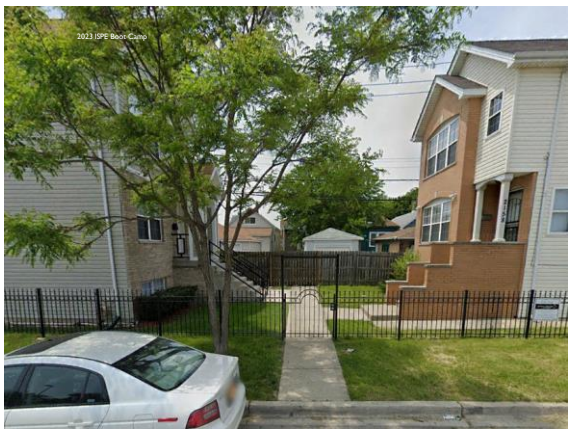
2023 ISPE Boot Camp

CRESPO V CHICAGO

Facts of the case:

- There are two homes on the west side of the service drive that face each other, in a north-south direction.
- There is no sidewalk along the west side of the service drive, but there is a small concrete pathway that leads perpendicularly from the curb to a gate in between the two homes.

77



78

2023 ISPE Boot Camp

CRESPO V CHICAGO

Facts of the case:

- At the south end of the service drive is a parking area with several perpendicular parking spaces.
- Plaintiff's husband parked their vehicle across the street from plaintiff's home in the northernmost perpendicular spot on the east side of the service drive.
- Plaintiff exited the vehicle and removed four bags of groceries from the back seat.
- Plaintiff walked onto the sidewalk on the east side of the service drive, down a curb cut that led into the service drive and proceeded west.

79

80

2023 ISPE Boot Camp

CRESPO V CHICAGO

Facts of the case:

- As she walked across the service drive, plaintiff fell into a pothole that was approximately two feet in diameter and three to five inches deep.
- Plaintiff testified she was aware of the pothole and attempted to walk around it, but she slipped on snow and ice on the street.
- Plaintiff's left leg fell into the pothole, causing her to hit her head on the ground.

81

82

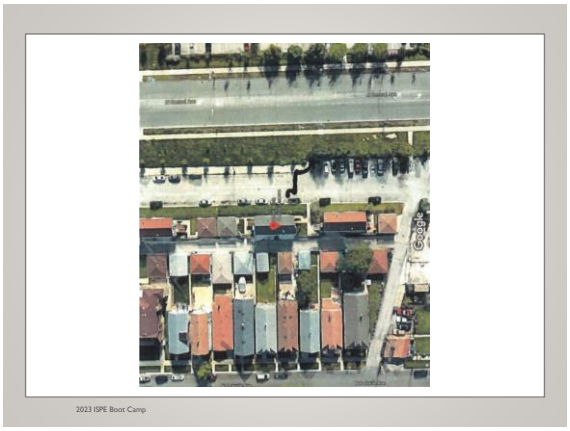
2023 ISPE Boot Camp

CRESPO V CHICAGO

Facts of the case:

- Below is an image from exhibit 1 to plaintiff's deposition, on which plaintiff marked an X at the location where her car was parked and traced in black her path across the service drive from her parked car to the pothole.
- Plaintiff's home is marked by a red dot.
- North and southbound Central Avenue, the grassy median, and the sidewalk are shown at the top of the image.

83



84

2023 ISPE Boot Camp

CRESPO V CHICAGO

Facts of the case:

- On January 8, 2017, Plaintiff sought medical treatment for her injuries.
- Plaintiff was referred to an orthopedist, who diagnosed her with inflammation and tears to ligaments and cartilage in her left leg.
- Plaintiff also complained of lower back pain related to the incident.

85

2023 ISPE Boot Camp

CRESPO V CHICAGO

Facts of the case:

- Plaintiff was treated with physical therapy and surgery to her left leg.
- However, she did not see improvement to her condition.
- Plaintiff continues to experience pain and limitation of activities such as walking and standing.

86

2023 ISPE Boot Camp

CRESPO V CHICAGO

Plaintiff's Plea:

- On April 11, 2019, plaintiff filed an amended complaint against the City of Chicago, alleging that its negligent failure to maintain the service drive resulted her injury.
- The City filed an answer and affirmative defenses, and the case proceeded to discovery.

87

2023 ISPE Boot Camp

CRESPO V CHICAGO

Trial Court Rulings:

- On February 21, 2020, the City moved for summary judgment on plaintiff's one-count amended complaint
- On May 5, 2020, the circuit court granted the City's motion and entered summary judgment in favor of the City.
- In its written order, the circuit court stated that plaintiff was not an intended and permitted user of the service drive where she fell because plaintiff was not crossing at either an intersection or a marked crosswalk.

88

2023 ISPE Boot Camp

CRESPO V CHICAGO

Trial Court Rulings :

- Plaintiff filed a motion to reconsider, arguing that the unique configuration of North Central Avenue near where plaintiff fell raised a question of fact as to whether she was an intended and permitted user of the service drive.
- The City filed a response. On August 26, 2020, the circuit court entered an order denying plaintiff's motion.
- On September 14, 2020, plaintiff filed a timely notice of appeal

89

2023 ISPE Boot Camp

CRESPO V CHICAGO

Plaintiff's Pleas:

- On appeal, plaintiff argues that the circuit court erred in entering summary judgment in favor of the City because she was an intended and permitted user of the service drive where she fell.
- Plaintiff argues that she was an intended and permitted user of the service drive at the time she was injured because she crossed in an unmarked but intended crosswalk.

90

CRESPO V CHICAGO

Matter of Law:

- The Local Governmental and Governmental Employees Tort Immunity Act provides that
- *"a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used." 745 ILCS 10/3-102(a) (West 2018).*

cr

91

CRESPO V CHICAGO

Court Rulings:

- Plaintiff concedes, and the exhibits in the record show, that there are no signs or pavement markings indicating a crosswalk where she fell.
- It is also undisputed that plaintiff crossed the service drive midblock, not at an intersection.

92

CRESPO V CHICAGO

Court Rulings:

- A midblock location does not become a crosswalk because it is used as a crosswalk; it becomes a crosswalk because it is so designated and appropriate signs placed. See Deren v. City of Carbondale, 13 Ill.App. 3d 473, 477 (1973) (citing Locigno v. City of Chicago, 32 Ill. App. 2d 412, 420-21 (1961)).
- We therefore find that plaintiff was not in a crosswalk when she fell.

93

CRESPO V CHICAGO

Court Rulings:

- Even if the plaintiff was an intended and permitted user of the service drive where she fell, we find that the City did not owe her a duty because the pothole was an open and obvious condition.
- Although the circuit court did not rule on this basis, based upon de novo review, we may affirm the circuit court's entry of summary judgment in favor of the City "on any basis the record permits, even if not the ground on which the court based its ruling." Sandstrom v. De Silva, 268 Ill. App. 3d 932, 935 (1994).

94

CRESPO V CHICAGO

Court Rulings:

- For the foregoing reasons, the judgment of the circuit court is affirmed.
- Found for the city.

95

DEMAMBRO V. CITY OF SPRINGFIELD

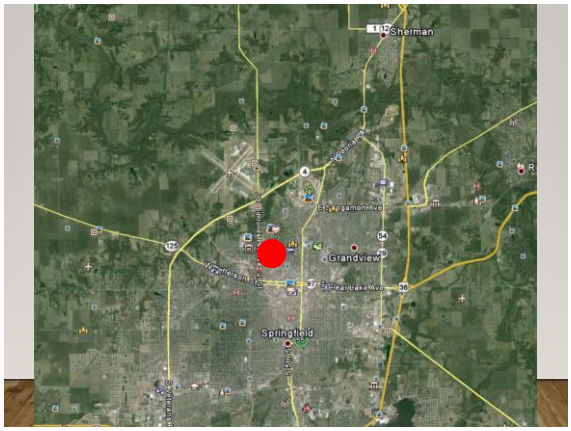
IL App (4th) 120957 (2013)

96

DEMAMBRO V. CITY OF SPRINGFIELD

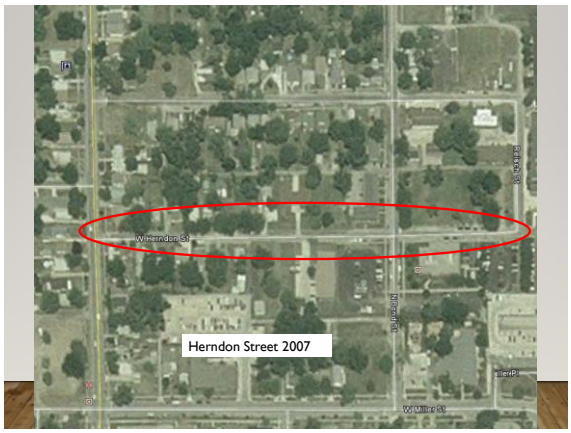
- Facts of the Case:
  - In July 2007, Plaintiff parked her vehicle on Herndon Street, the city street parallel to the curb in front of her house.
  - No signs, meters, or road stripes indicated that the City permitted parking at that location.
  - The City conceded that parking is permitted at that location.
  - After placing an item into the passenger side of her vehicle, plaintiff walked toward the driver's side of her vehicle and fell into a pothole located near the curb, injuring her ankle.

97



98

99



100

101

102

DEMAMBRO V. CITY OF SPRINGFIELD

- Facts of the Case:
  - Plaintiff sued the City for failing to maintain its streets in a reasonably safe condition.
  - The City later filed a motion for summary judgment asserting that it was immune from liability under the Tort Immunity Act.

103

DEMAMBRO V. CITY OF SPRINGFIELD

- 745 ILCS 10/3-102 :
  - (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

104

DEMAMBRO V. CITY OF SPRINGFIELD

- Trial Court Rulings:
  - In July 2012, the trial court entered summary judgment in favor of the City finding:
    - …the Plaintiff failed to provide evidence that the City intended for Herndon Street to be used by pedestrians.
    - …there was no evidence that the street in front of the Plaintiff's house had parking meters, parking stalls, or lined spaces.
    - In the absence of these manifestations, it would be an enormous burden to impose on the City a duty to all pedestrians who are entering or exiting a car within its boundaries.
    - …imposing a burden with regard to streets and roadways in their entirety would be unduly expensive and burdensome.

105

DEMAMBRO V. CITY OF SPRINGFIELD

- Trial Court Rulings:
  - While it may have been necessary for Plaintiff to exit the curb so that she could reach the driver side of her vehicle, necessity does not equate to an intended user.
  - Based on the foregoing, the Court finds that Plaintiff was merely a permitted user of the street – not an intended user.
  - There was no evidence the City physically manifested its intent that Plaintiff use the street.
  - This appeal followed.

106

DEMAMBRO V. CITY OF SPRINGFIELD

- Plaintiff's Pleadings:
  - Plaintiff argues that the trial court erred by granting summary judgment in favor of City because the court erroneously found that she was not an "*intended*" user of the parking space in which she was injured.

107

DEMAMBRO V. CITY OF SPRINGFIELD

- Matters of Law:
  - Summary judgment is appropriate *"if the pleadings, depositions, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."* 735 ILCS 5/2-1005(c).
  - When deciding whether to grant a motion for summary judgment, courts must draw all reasonable inferences in favor of the nonmoving party. *Gaston v City of Danville, 393 Ill.App. 3d 591.*

108

DEMAMBRO V. CITY OF SPRINGFIELD

- Matters of Law:
  - In *Di Domenico v Village of Romeoville*, the appellate court concluded that the plaintiff was an intended *and* permitted user of a city street where he was "lawfully parked parallel to the curb" and was injured when he fell into a hole in the street while walking to retrieve an item from the vehicle's trunk.
  - In so concluding – and without mentioning signs, signals, meters, or stripes – the court added that the plaintiff was an intended and permitted user because he was legally parked and had to use the street to gain access to his vehicle.

109

DEMAMBRO V. CITY OF SPRINGFIELD

- Matters of Law:
  - Four years later, the Supreme Court of Illinois concluded that a decedent was *not* an intended and permitted user of a six-lane highway where he was struck and killed near the center lane of traffic as he was attempting to cross the road outside of a crosswalk. *Wojdyla v. City of Park Ridge*.

110

DEMAMBRO V. CITY OF SPRINGFIELD

- Matters of Law:
  - Less than a year after *Wojdyla*, the supreme court held that a plaintiff, who was injured when he exited his lawfully parked truck to deliver boxes and stepped into a pothole, was an intended and permitted user of the street. *Curatola v. Village of Niles*.
  - In so holding, the supreme court restated what it had explained less than a year before in *Wojdyla* – namely, that a reviewing court "*need look no further than the property itself which the plaintiff was using when injured to determine its intended use*."

111

DEMAMBRO V. CITY OF SPRINGFIELD

- Matters of Law:
  - In 1995, the supreme court held that a plaintiff who was injured when she fell after tripping on a pothole in the street was not using the street for its *intended* purpose because she was walking outside of the established crosswalk. Vaughn, 166 Ill. 2d, 163.
  - As part of its rationale, the supreme court squared its holding with its previous decisions related to parked cars: "We note that, *except for those cases in which street defects were in the area immediately around a parked vehicle*, Illinois courts have refused to impose a duty on municipalities for injuries to pedestrians which were caused by those defects."

112

DEMAMBRO V. CITY OF SPRINGFIELD

- Matters of Law:
  - Three years later, the supreme court rejected a plaintiff's argument that he was an intended and permitted user of a one-lane bridge owned by a township. *Boub, 183 Ill 2d 520*.
  - The supreme court concluded that although it "*had no quarrel with the proposition that bicycle riders were permitted users of the road and bridge, the court did not believe that they must also be considered intended users of those facilities*."

113

DEMAMBRO V. CITY OF SPRINGFIELD

- Appellate Court Rulings:
  - The trial court's focus on the lack of evidence of a "*physical manifestation*" by the City that it intended the street in front of Plaintiff's house to be used by pedestrians misapplies the scope of analysis outlined by the supreme court.
  - The proper scope in cases involving a pedestrian who is using the street for ingress and egress to a vehicle that has been lawfully parked on the street is not whether the pedestrian is intended to be on the street as a whole, but whether, as the supreme court put it, the pedestrian is intended to be "*in the area immediately around a parked vehicle*."

114

DEMAMBRO V. CITY OF SPRINGFIELD

- Appellate Court Rulings:
  - However, unless otherwise indicated, the area near the curb is intended for parking and, as a result, that area is intended for:
    - (1) parked vehicles and
    - (2) pedestrians who exited and seeking to access their vehicles.
  - Accordingly, we hold that as a matter of law, Plaintiff was an "intended" user of the area immediately around her parked vehicle within the meaning of section 3-102 (a) of the Tort Immunity Act.

115

DEMAMBRO V. CITY OF SPRINGFIELD

- Appellate Court Rulings:
  - We reverse the trial court's granting of summary judgment and remand for further proceedings.
  - Found for the Plaintiff and against the Defendant.

116

DYCUS V COUNTY OF EDGAR

2020 IL App (4th) 200190-U

117

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- TOMMY DYCUS, BRANDY DYCUS, SHAWN DOAN and APRIL MANNING, Plaintiffs-Appellants
- THE COUNTY OF EDGAR, ILLINOIS, Defendant-Appellee

118

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- In March 2020, the circuit court entered a written order denying plaintiffs' motions for partial summary judgment and granting in part and denying in part defendant's motion for summary judgment.
- The court found defendant was entitled to absolute immunity for its discretionary decisions concerning the culvert replacement project and "therefore Section 2- 201 immunity applies as a matter of law."
- Specifically, the court stated, "defendant in this case has met its burden establishing that the acts of Assistant Engineer Mohon and the road crew in the design and completion of the culvert replacement project in question were discretionary decisions performed by policy-making employees of defendant."

119

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- The court also held defendant was entitled to immunity pursuant to section 3-104 of the Tort Immunity Act (745 ILCS 10/3-104 (West 2016)) for any failure to place warning signs at the road repair site.
- The court denied defendant's motion for summary judgment on the issue of whether plaintiff drivers were greater than 50% contributorily negligent as a matter of law.

120

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- Plaintiffs, Tommy Dycus, Brandy Dycus, Shawn Doan, and April Manning, filed a first amended complaint against defendant, County of Edgar, Illinois, for personal injuries stemming from a May 2018 accident in which plaintiffs' two motorcycles, each with a passenger, lost control and crashed after encountering a road repair patch resulting from a culvert replacement on Edgar County Road 1650 N.

121

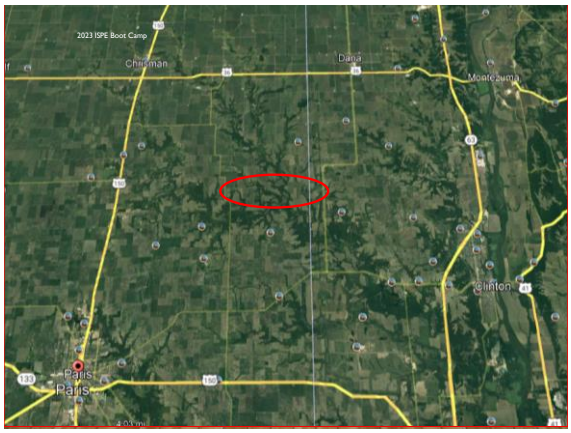
2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- The amended complaint alleged defendant was negligent in its
  - (1) repair of the road,
  - (2) inspection of the road, and
  - (3) failure to post signs warning of the road repair site.

122



123

124

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Defendant's Pleas:

- Defendant filed a motion for summary judgment, arguing
  - (1) it was absolutely immune from liability under section 3-104 of the Local Government and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/3-104 (West 2016)) for any failure to provide warning signage on the road,

125

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Defendant's Pleas:

- Defendant filed a motion for summary judgment, arguing
  - (2) it was absolutely immune from liability under sections 2-109 and 2-201 of the Tort Immunity Act (745 ILCS 10/2-109, 2-201 (West 2016)) for its discretionary decisions in improving, maintaining, repairing, and inspecting the road where the culvert replacement took place, and
  - (3) plaintiff drivers were greater than 50% contributorily negligent.

126

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Plaintiffs' Pleas:

- Plaintiffs filed two motions for partial summary judgment, arguing defendant was not entitled to discretionary immunity.
- Subsequently, the circuit court denied in part and granted in part defendant's motion for summary judgment and denied plaintiffs' partial motions for summary judgment.
- The circuit court denied the portion of defendant's motion for summary judgment asserting plaintiff drivers were contributorily negligent.

127

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Plaintiffs' Pleas:

- Plaintiffs appeal the circuit court's denial of their motions for partial summary judgment and the court's granting, in part, of defendant's motion for summary judgment.
- On appeal, plaintiffs argue defendant is not entitled to discretionary immunity under sections 2-109 and 2-201 of the Tort Immunity Act.

128

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Plaintiffs' Pleas:

- Plaintiffs assert defendant failed to meet its burden of proof to establish its road crew made policy determinations and exercised discretion when completing trench infill compaction work during the culvert replacement, creating the circumstances that resulted in the injuries to plaintiffs.

129

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- On Sunday, May 6, 2018, plaintiffs in a group of three motorcycles went out for a motorcycle ride.
- Plaintiffs started their ride from the Dycus residence in Dana, Indiana.
- Plaintiff Tommy Dycus drove a motorcycle with his wife, plaintiff Brandy Dycus, as his passenger.
- Plaintiff Shawn Doan drove another motorcycle with his wife, plaintiff April Manning, as a passenger.

130

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- Troy Farr drove the third motorcycle.
- Dycus's motorcycle led the group with Farr second in line behind the Dycus motorcycle and to the right.
- Doan rode directly behind the Dycus motorcycle and behind and to the left of the Farr motorcycle.

131

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- The accident occurred between 4 p.m. and 5 p.m.
- Shawn testified it was light outside at the time of the accident.
- As the group approached Edgar County Road 1650 N., the group observed a depression in the road.
- Specifically, the group observed gravel across the road, which stood out against the road's black pavement.

132

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- Tommy testified the front tire of his motorcycle hit the area of the gravel, causing him to lose control of the motorcycle.
- When Shawn observed Dycus's brake light come on, he swerved his motorcycle to the left to avoid hitting the Dycuses.
- As Shawn went to the left, his motorcycle entered the depression in the road and ultimately "barrel rolled" when the back end of the motorcycle went out from underneath him.
- Plaintiffs testified they sustained injuries as a result.

133

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- On Wednesday, May 2, 2018, a few days before the accident, defendant undertook a culvert replacement project on County Road 1650 N. in Edgar County.
- Dirk Mohon, the Assistant County Engineer, made the decision to replace the culvert because the pipe was caving in.
- Mohon worked at the Edgar County Highway Department for 35 years.
- Mohon developed the method defendant uses to replace culverts.
- Defendant replaced around 30 to 40 culverts in the year before the accident.

134

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- Edgar County Road 1650 N. is an oil and chip road traveled by 75 or fewer vehicles per day, and oil and chip roads have numerous uneven surfaces including depressions and dips; the roads heat, thaw, and settle and there is loose rock and gravel scattered on oil and chip roads.
- Mohon chose the method used to replace the culvert and the trench infill material (CA6 crushed aggregate) used in the culvert replacement.
- Four Edgar County Highway Department employees performed the culvert replacement.

135

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- On Thursday, May 3, 2018, Mohon went to the culvert replacement site to inspect the work and found it satisfactory.
- Any settlement of the site occurred between Thursday and Sunday, and the highway department does not typically have crews out on the weekends.
- Mohon also inspected the site immediately after the Sunday, May 6, 2018, accident and found it to be satisfactory.

136

DYCUS V COUNTY OF EDGAR

Facts of the Game:

- On Monday, May 7, 2018, an employee of defendant who applied an asphalt cold patch to part of the depression was unable to apply asphalt to the entire depression because it was not deep enough to hold the patch.
- Mohon opined that if the road crew applied the cold patch immediately after installing the culvert on May 2, 2018, there still would have been a depression in the roadway when the accident occurred because the asphalt would have settled along with the infill material.
- Mohon made the decision to wait to apply the patch until after settlement to avoid having to patch multiple times and to conserve county resources.

137

DYCUS V COUNTY OF EDGAR

Plaintiffs' Pleas:

- Plaintiffs' civil engineering expert, Christopher Billing, opined there are four acceptable methods for culvert replacement.
- According to Billing, defendant used the "dump" method which is the least expensive of the four methods.
- Billing admitted the method chosen by defendant was permissible but indicated the method produces more settlement than other methods.

138

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Plaintiffs' Pleas:

- Plaintiffs appeal both the circuit court's denial of their motions for partial summary judgment and the granting, in part, of defendant's motion for summary judgment.
- On appeal, plaintiffs argue defendant is not entitled to discretionary immunity under sections 2-109 and 2-201 of the Tort Immunity Act.

139

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Plaintiffs' Pleas:

- Plaintiffs assert defendant failed to meet its burden of proof to establish its road crew made policy determinations and exercised discretion when completing trench infill compaction work during the culvert replacement, creating the circumstances which resulted in injuries to plaintiffs.
- Defendant disagrees and argues the circuit court's judgment should be affirmed where it is entitled to immunity under sections 2-109 and 2-201 of the Tort Immunity Act because Mohon and the road crew exercised discretion in replacement of the culvert and the means and methods used to replace the culvert.

140

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Matter of Law:

- Section 2-201 of the Tort Immunity Act (745 ILCS 10/2-201 (West 2016)) provides, *"Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused."*

141

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Matter of Law:

- Policy determinations are defined as " '*those decisions which require the municipality to balance competing interests and to make a judgment call as to what solution will best serve each of those interests.*' " Monson v. City of Danville, 2018 IL 122486, ¶ 30, 115 N.E.3d 81 (quoting Harinek, 181 Ill. 2d at 342).

142

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Matter of Law:

- "In contrast to discretionary and policy decisions, a public entity's ministerial acts are not immune from liability under the Tort Immunity Act." "Consequently, the negligent performance of ministerial acts can subject a municipality to tort liability."

143

2023 ISPE Boot Camp

DYCUS V COUNTY OF EDGAR

Matter of Law:

- Immunity under section 2-201 of the Tort Immunity Act must be decided on a case-by-case basis and is absolute, covering both negligent and willful and wanton conduct.
- We review the circuit court's summary judgment rulings de novo.

cr

144

DYCUS V COUNTY OF EDGAR

Court Rulings:

- Defendant is entitled to immunity under sections 2-201 and 2-109 of the Tort Immunity Act where Mohon's and the road crew's actions constituted determinations of policy and an exercise of discretion.
- Mohon made decisions regarding the method, means, and material used for the culvert replacement.
- The road crew made decisions regarding the depth of each layer of gravel, how many layers to put in, and how many times to compact the gravel.

145

DYCUS V COUNTY OF EDGAR

Court Rulings:

- Plaintiffs' expert, Billing, recognized the road crew must exercise their discretion to determine the frequency of inspections to the site based on the methodology they used to replace the culvert.
- Mohon inspected the site the day after the culvert replacement and found the road crew's work satisfactory.
- Further, Mohon inspected the site after the accident and found it again to be satisfactory.

146

DYCUS V COUNTY OF EDGAR

Court Rulings:

- Based on the record, the road crew followed the culvert replacement plan created by Mohon and exercised their discretion in compaction of the worksite.
- We agree with the circuit court where it determined, "defendant in this case has met its burden establishing that the acts of Assistant Engineer Mohon and the road crew in the design and completion of the culvert replacement project in question were discretionary decisions performed by policy-making employees of defendant."

147

DYCUS V COUNTY OF EDGAR

Court Rulings:

- Therefore, we find the circuit court properly denied plaintiffs' motions for partial summary judgment and granted, in part, defendant's motion for summary judgment where defendant is entitled to discretionary immunity under sections 2-109 and 2-201 of the Tort Immunity Act (745 ILCS 10/2-109, 2-201 (West 2016)), for its discretionary decisions concerning the culvert replacement project.

148

DYCUS V COUNTY OF EDGAR

Court Rulings:

- For the reasons stated, we affirm the circuit court's judgment for the defendant, the County of Edgar.

149

ROBINSON V WASHINGTON TOWNSHIP

2012 IL App (3d) 110177

150

ROBINSON V WASHINGTON TOWNSHIP

- Facts of the Case:
  - Ricky Robinson, Jr., a Minor, by Beverly Bourne, His Mother and Next Friend, Plaintiff-Appellant
  - Washington Township, Defendant-Appellee
  - Ricky Robinson, appeals from an order of the circuit court dismissing his complaint against Defendant for injuries he sustained when the automobile in which he was riding hit a pothole and crashed.

151

ROBINSON V WASHINGTON TOWNSHIP

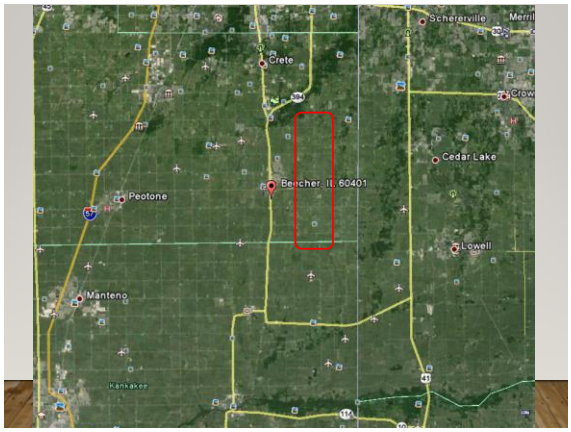
- Facts of the Case:
  - The trial court found Defendant immune under Tort Immunity Act
  - On appeal, Plaintiff argues that the court erred in granting Defendant's motion to dismiss because Defendant had a duty to repair the roadway in a reasonably safe manner once it began the work

152

ROBINSON V WASHINGTON TOWNSHIP

- Facts of the Case:
  - On April 23, 2008, Ricky was a passenger in a motor vehicle driven by his father, Ricky Robinson, Sr.
  - As Robinson Sr. was driving southward on Stony Island Road in Washington Township, he hit a pothole, ran over construction debris and lost control of the vehicle.
  - The car rolled over and landed on its roof.
  - Ricky sustained blunt head trauma and a puncture wound to his back.

153



154

155

156

157

ROBINSON V WASHINGTON TOWNSHIP

- Plaintiff's Pleadings:

  After having started repairs:

  1. failed to provide a road free of hazardous defects
  2. failed to maintain a road in a reasonably safe condition
  3. failed to properly inspect the road for hazardous defects
  4. failed to warn motorists by the use of properly located legible signs of the existence of uneven and undulating surface

158

ROBINSON V WASHINGTON TOWNSHIP

- Facts of the Case:

  After having started repairs:

  5. failed to warn motorists by the use of properly located legible signs of the existence of the potholes and pitted surface
  6. failed to provide and use suitable temporary covers over potholes, pits and uneven surfaces
  7. failed to finish the repair of the hazardous conditions of the road

159

ROBINSON V WASHINGTON TOWNSHIP

- Matters of Law:
  - Under Sec 2-201, immunity applies if the township can demonstrate that the act of repairing the roadway was a determination of policy and an exercise of discretion, rather than ministerial.
  - Policy decisions are "*those decisions which require the municipality to balance competing interests and to make a judgment call as to what solution will best serve each of those interests.*"

160

ROBINSON V WASHINGTON TOWNSHIP

- Matters of Law:
  - Discretionary acts involve the exercise of personal judgment in deciding whether to perform a certain act or in what manner the act should be conducted.
  - In contrast, ministerial acts "*are those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official's discretion as to the propriety of the act.*"

161

ROBINSON V WASHINGTON TOWNSHIP

- Matters of Law:
  - A municipality's act of repair is generally considered a ministerial act for which it may be liable if negligently performed. (*Gutstein v City of Evanston*).

162

ROBINSON V WASHINGTON TOWNSHIP

- Plaintiff's Pleadings:
  - Plaintiff argues that defendant is not immune from liability under the Tort Immunity Act because the activities of repairing the roadway were ministerial in nature and the township had a duty to perform them in a reasonably safe manner.
  - Discretionary immunity does not extend to the township's implementation of its plan of maintenance and repair.

163

ROBINSON V WASHINGTON TOWNSHIP

- Plaintiff's Pleadings :
  - The township was required to complete the repairs in a reasonably safe manner, and the Tort Immunity Act does not immunize it from liability.

164

ROBINSON V WASHINGTON TOWNSHIP

- Defendant's Pleadings:
  - Defendant urges us to follow *Lusietto v Kingan* and conclude that the repair of a roadway falls within a municipality's discretionary functions.
  - In *Lusietto*, the Plaintiff filed suit against a highway maintenance supervisor alleging negligence in the supervisor's failure to repair a pothole.

165

ROBINSON V WASHINGTON TOWNSHIP

- Defendant's Pleadings:
  - The court noted that the supervisor's duties were governmental in character and required the exercise of discretion and judgment as to which holes to fill and which holes not to fill.
  - It then concluded that the supervisor was protected from liability based on the theory of public official immunity

166

ROBINSON V WASHINGTON TOWNSHIP

- Court Rulings:
  - Our supreme court has plainly stated that whether a municipality engages in a plan to improve a roadway is a discretionary matter, but once the decision to perform work is made, it must be done with reasonable care.
  - The order of the circuit court of Will County is reversed, and the cause is remanded for further proceedings.
  - Found for the Plaintiff and against the Defendant.

167

ROWE V TOWN OF NORMAL

2012 IL App (4th) 120057-U

168

ROWE V TOWN OF NORMAL

Facts of the Case:

- ROWE CONSTRUCTION, a Division of United Contractors Midwest, Inc., Plaintiff-Appellant
- THE TOWN OF NORMAL, an Illinois Municipal Corporation; and H.J. EPPEL & COMPANY, Defendants-Appellees

169

ROWE V TOWN OF NORMAL

Facts of the Case:

- In October 2011, defendant, the Town of Normal, requested bids for a street resurfacing project.
- After considering the bids submitted by plaintiff, Rowe Construction, and defendant, H.J. Eppel & Company, the Town awarded the project to Eppel.

170

ROWE V TOWN OF NORMAL

Facts of the Case:

- In November 2011, Rowe sued the Town and Eppel for injunctive relief and damages, arguing, in part, that Eppel's failure to attach an addendum to its bid constituted a material variance that rendered the bid nonresponsive.
- Following a hearing that concluded in December 2011, the trial court denied Rowe's suit.
- Rowe appeals, arguing that the trial court erred by denying its amended complaint for injunctive relief and damages.

171

ROWE V TOWN OF NORMAL

Facts of the Case:

- In October 2011, the Town published a "bid call," requesting sealed bids for a "2011 Street Resurfacing" project.
- The bid call conveyed
  - (1) the scope of the resurfacing project,
  - (2) the required materials and their approximate quantities,
  - (3) an October 12, 2011, prebid conference to answer questions regarding the project, and
  - (4) an October 17, 2011, deadline for bid submissions.
- The Town also published the details of the prebid conference in the local newspaper and the "Illinois Department of Transportation Notice to Contractors Bulletin" on two successive weeks during that month.

172

ROWE V TOWN OF NORMAL

Facts of the Case:

- Included with the Town's bid call was a "Proposal" packet that contained, in part, a "Notice to Bidders."
- The notice provided potential bidders information regarding when and where the bids were to be opened, a brief description of the work to be performed, and the "bidders instructions."

173

ROWE V TOWN OF NORMAL

Facts of the Case:

- The bidder's instructions contained the following guidance:

  "*The Awarding Authority reserves the right to waive technicalities and to reject any or all proposals as provided in the Bureau of Local Roads and Streets Special Provision for Bidding Requirements and Conditions for Contract Proposals contained in the 'Supplemental Specifications and Recurring Special Provisions'.*"

174

ROWE V TOWN OF NORMAL

Facts of the Case:

- At the October 12, 2011, prebid conference, representatives from Rowe and Eppel met with the Town's engineering representatives, Eric Herbst and Gene Brown.
- Herbst then sent the following message to Rowe and Eppel by e-mail:
- "Attached please find a copy of the attendance list and minutes for yesterday's prebid meeting for the Town's 2011 Street Resurfacing Project.
- The minutes and sign-in sheet are titled addendum No. 1 and need to be returned with the bid documents.
- PLEASE RESPOND TO THIS MESSAGE TO CONFIRM RECEIPT OF THE MINUTES AND ATTENDANCE LIST."

175

ROWE V TOWN OF NORMAL

Facts of the Case:

Addendum No. 1 also stated, in pertinent part, the following:

- "8. Short-term pavement markings are intended to include lane lines, stop bars, and turn arrows where they already exist; plan quantities reflect this.
- Inclusion of crosswalks will be on a case-by-case basis.

176

ROWE V TOWN OF NORMAL

Facts of the Case:

- 10. On streets with overlaid gutter pans, asphalt from previous overlays is present in a number of driveway approaches.
- Removal of this existing asphalt from driveway approaches will not be paid for separately but shall be included in the contract unit price per square yard for Bituminous Surface Removal.
- Placement of asphalt to facilitate drainage may be required in these and possibly other driveways.

177

ROWE V TOWN OF NORMAL

Facts of the Case:

- Placement of asphalt in driveway approaches, including all cleaning, sweeping, blowing, and priming needed, shall be included in the contract unit price per ton for Hot Mixed Asphalt Surface Course.
- On this project, filled gutters are present on the southern portion of Adelaide Street, Mulberry Street, the southern portion of School Street, and the southern portion of Grandview Drive.

178

ROWE V TOWN OF NORMAL

Facts of the Case:

- 22. These minutes and the attached sign-in sheet shall be known as addendum No. 1 and shall be included in the contract.
- This addendum shall be returned with the bid documents."
- (A "driveway approach," as that term is used in addendum No. 1, begins where the driveway entrance contacts the street surface and ends just prior to the public sidewalk that usually intersects a driveway.)

179

ROWE V TOWN OF NORMAL

Facts of the Case:

- On October 17, 2011, the Town clerk opened the sealed bids and determined that Eppel's bid was approximately $12,000 lower than Rowe's.
- One week later, Rowe filed a protest with the Town, arguing that because Eppel's bid did not include addendum No. 1 as mandated, the Town was required to reject Eppel's bid as nonresponsive.
- In November 2011, the Town's manager issued a written decision on Rowe's protest, concluding as follows: "Based on a reasonable finding of technical or minor variance, the binding nature of the prebid minutes, the presence of all bidders at the prebid conference, and the lack of evidence showing fraud, corruption, or illegal acts having the effect of undermining the integrity of the procurement process, the Rowe protest is denied."

180

ROWE V TOWN OF NORMAL

Facts of the Case:

- At a November 7, 2011, meeting, the Town council considered, in pertinent part,
  - (1) the bids proffered by Rowe and Eppel;
  - (2) the written decision by the Town manager, denying Rowe's protest; and
  - (3) presentation by the respective parties regarding the merits of Rowe's protest.
- Thereafter, the council awarded the 2011 Street Resurfacing project to Eppel.

181

ROWE V TOWN OF NORMAL

Facts of the Case:

- Two weeks later, Rowe filed an amended complaint for injunctive relief and damages, arguing, in part, that Eppel's failure to attach addendum No. 1 to its bid constituted a material variance that required the Town to reject Eppel's bid.

182

ROWE V TOWN OF NORMAL

Plaintiff's Pleas:

- At a hearing on Rowe's complaint that began later that same month, Rowe's vice-president, Michael L. Goeken, testified that Rowe had previously bid on the Town's street resurfacing projects for 20 of his 27 years of employment with Rowe.
- Goeken stated that addendum No. 1, which Rowe used to prepare its bid for the 2011 street resurfacing project, "affected the cost of the work to be performed."

183

ROWE V TOWN OF NORMAL

Plaintiff's Pleas:

- As an example, Goeken explained that paragraph eight of the addendum—pertaining to short-term pavement markings—increased costs because the project plans required a "4-inch stripe on the pavement" and turn arrows were more labor intensive.
- Goeken also stated that paragraph 10 of the addendum affected the scope of the street resurfacing project because
  - (1) replacing asphalt in driveways requires manual labor, which increased the cost and
  - (2) prior to the addendum's issuance, Rowe "did not intend on nor was it directed by the bid call plans to do any driveway, driveway removal, or driveway work."

184

ROWE V TOWN OF NORMAL

Facts of the Case:

- Gene Brown, the Town's engineer, testified that he was aware Eppel had not included addendum No. 1 with its bid, but he viewed the omission as a "minor technicality."
- Brown based his opinion on his observation at the prebid meeting that
  - (1) no changes were made to the scope of the project, the quantities estimated, or the expense categories and
  - (2) Eppel and Rowe were represented at the prebid meeting.
- Although he agreed that Eppel was the winning bidder, Brown had "procedural concerns" regarding the propriety of the award because it had to be approved by the Illinois Department of Transportation (IDOT) to receive federal funding.

185

ROWE V TOWN OF NORMAL

Facts of the Case:

- Based on that concern, sometime after the sealed bids were opened, Brown contacted Eppel by phone to discuss the fact that Eppel had not included addendum No. 1 as part of its bid.
- Brown explained the rationale that prompted his phone call, as follows:
- "I wanted to make sure that Eppel had received the addendum when it was sent, even though I realize Eppel didn't acknowledge it, but I wanted to make sure that Eppel had gotten it, and they did acknowledge that they did get the email with the addendum, and that Eppel considered it the minutes in their bid.
- I just wanted to make sure Eppel had received it."

186

ROWE V TOWN OF NORMAL

Facts of the Case:

- Brown acknowledged that he had exchanged e-mails with IDOT representative David Speicher regarding whether Rowe's protest would preclude IDOT from releasing the $400,000 federal funding allotted for the 2011 street resurfacing project.
- In one exchange, Speicher noted that *"if an addendum was issued, it must be important" but clarified that he was not suggesting that minutes to a mandatory prebid meeting should be considered an addendum".*

187

ROWE V TOWN OF NORMAL

Trial Court Rulings:

- Thereafter, the trial court found, as follows: The court finds that the failure on the part of Eppel to include the prebid meeting minutes along with its bid is not a material variance to the invitation to bid or the bid itself, that it is a waivable [sic] technical variance for which the Town has exercised its right to do so in a reasonable and nonarbitrary manner.
- This appeal followed.

188

ROWE V TOWN OF NORMAL

Plaintiff's Pleas:

- Rowe argues that the trial court abused its discretion by denying its amended complaint for injunctive relief and damages.
- Specifically, Rowe contends that
  - (1) Eppel's failure to submit addendum No. 1 with its bid constituted a material variance and
  - (2) the Town's conduct toward Eppel after it opened the parties' respective bids constituted favoritism and unfair dealing.

cr

189

ROWE V TOWN OF NORMAL

Court Rulings:

- Rowe also contends that the Town's conduct toward Eppel after opening the parties' respective bid constituted favoritism and unfair dealing.
- Specifically, Rowe assesses that Brown unfairly
  - (1) attempted to solicit confirmation of Eppel's receipt and acceptance of the terms contained in addendum No. 1 after the bids were opened and
  - (2) omitted Speicher's e-mail from the report submitted to the Town council on Rowe's protest.
- We disagree.

190

ROWE V TOWN OF NORMAL

Court Rulings:

- Moreover, based on the record, we conclude that the Town handled Rowe's protest in a fair and impartial manner.
- Here, Rowe's protest was considered by the Town manager and the Town council in separate proceedings.

191

ROWE V TOWN OF NORMAL

Court Rulings:

- The minutes of the November 7, 2011, meeting—at which the Town council considered whether to accept Eppel's bid—outlined that the council members
  - (1) considered presentations from the Town's corporation counsel and Rowe's attorney regarding the merits of their respective positions,
  - (2) asked numerous questions probing the validity of each stated position, and
  - (3) engaged in "considerable council discussion" regarding the matter before deciding to accept Eppel's bid.

192

ROWE V TOWN OF NORMAL

Court Rulings:

- For the reasons stated, we affirm the trial court's judgment.

193

BRETTMAN V VIRGIL COOK

2020 IL App (2d) 190955

194

BRETTMAN V VIRGIL COOK

Facts of the Case:

- DEREK BRETTMAN, Individually and as Guardian of Gina Brettman, a Disabled Person, Plaintiff-Appellant
- VIRGIL COOK & SON, INC., and PLOTE CONSTRUCTION, INC., Defendants- Appellees.
- Appeal from the Circuit Court of McHenry County, No. 15-LA-76

195

BRETTMAN V VIRGIL COOK

Facts of the Case:

- Plaintiff, Derek Brettman, filed a negligence suit against defendants, Virgil Cook & Son, Inc. (Virgil Cook), and Plote Construction, Inc. (Plote), alleging that their negligent placement of temporary traffic control lights proximately caused truck driver Israel Vela to run a red light and strike Gina's vehicle.
- All three of the temporary lights controlling Vela's movement were placed higher than was mandated by what were, at least arguably, the controlling regulations.

196

BRETTMAN V VIRGIL COOK

Facts of the Case:

- Vela testified in deposition that, as he approached the intersection, he saw only permanent traffic lights, which were covered with tarps.
- He slowed down and looked for an alternate instructive signal, such as a stop sign, but he did not see any.
- Believing that he had the right-of-way, he "rolled" through the intersection, finally seeing the temporary traffic light, which was red, at or near the moment he struck Gina's vehicle.

197

BRETTMAN V VIRGIL COOK

Facts of the Case:

- Defendants moved for summary judgment.
- Brettman filed an affidavit in opposition to summary judgment by his expert, Dr. David Noyce.
- Pointing to Vela's testimony, as well as other facts in the record and his personal knowledge of the limitations of human perception of traffic flow Noyce opined that the improper placement of the traffic lights made it difficult for Vela, or any driver, to see them in time to react appropriately.

198

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the Case:

- The trial court struck Noyce's affidavit, that Noyce was rendering opinions rather than introducing facts.
- The trial court accepted that defendants breached a duty to place the traffic lights at the appropriate height.

199

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the Case:

- However, the court determined that the negligent placement of the lights was a condition but not a cause of the accident, stating: "the lights might have been too high, but there's no evidence that their height prevented Vela from seeing them as he approached the intersection."
- The court granted summary judgment to defendants.

200

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the Case:

- This matter arises out of the March 12, 2014, traffic accident between Vela and Gina.
- The accident occurred at the intersection of Illinois Route 47 and Kreutzer Road in Huntley, which was then under construction.
- It was 20 degrees Fahrenheit, winds were blowing at 20 miles per hour, and snowplows were clearing the roads from the snow that had fallen the day before.

201

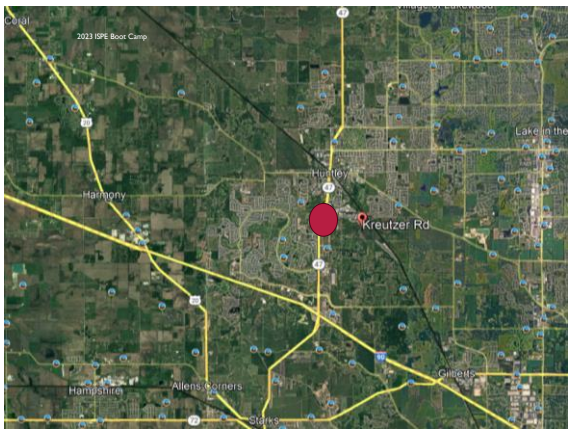
2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the Case:

- Vela, who had just driven from Texas to deliver a load of goods, traveled south on Route 47 in his tractor-trailer.
- Gina traveled east on Kreutzer Road and was making a left turn onto northbound Route 47 when Vela struck her vehicle.
- Vela did not see the temporary red light until it was too late to stop.

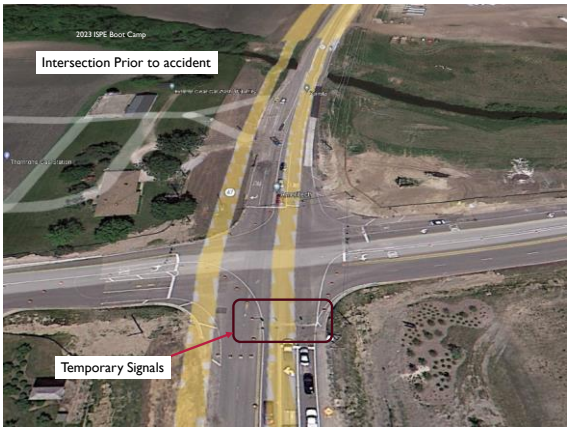
202



203

204

205



206

207

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- Brettman filed a myriad of negligence suits.
  - Against Vela and his employer. (pending)
  - He filed suit against the shipper of the product Vela delivered and the broker that arranged the trip. (summary judgment for shipper and broker)
  - He filed suits against various entities involved in the construction of the intersection, many of which have ended in settlement.

208

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- More closely related to the instant case, Brettman filed suit against Christopher B. Burke Engineering, Ltd. (Burke), the company hired by the Village of Huntley to oversee the project, including the installation of the temporary traffic lights.
- The Burke suit was resolved in a summary judgment for Burke.

209

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- Finally, Brettman filed suit against defendants here.
- Plote had been hired by IDOT and was the general contractor for the intersection construction project.
- Virgil Cook was hired to tear down the old lights, erect temporary replacements, and, ultimately, install new permanent traffic lights.
- Again, Brettman would allege that Plote and Virgil Cook negligently installed the temporary lights by placing them higher from the ground than controlling regulations allowed, which caused Vela to be unable to see the light in time to react appropriately.

210

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- In early July 2013, Virgil Cook tore down the old traffic lights.
- In late July 2013, Virgil Cook hung the temporary lights.
- John Janikowski, an IDOT engineer, inspected the temporary lights for turn-on.
- He did not have a specific memory of the event.
- However, typically, he does not measure the top height of the temporary lights.
- Instead, he observes their general visibility.

211

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- In January 2014, Virgil Cook constructed the new traffic support poles and intersection arms, covering the still nonoperational signal heads with tarps.
- Virgil Cook planned to transition from the temporary lights to the permanent lights in early March 2014.
- However, bad weather delayed the plan.
- Therefore, on the date of the accident, motorists approaching the intersection saw duplicate traffic signal heads, one covered with a tarp and the other, higher up, operational.

212

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- The parties agree that the controlling regulations require all permanent signal heads to be not more than 25.6 feet above the pavement (from the top of the signal housing).
- The parties dispute whether those regulations apply to all temporary signal heads.
- The parties also dispute whether, even if those regulations do not apply to all temporary signal heads, those regulations still apply to the temporary signal heads contracted for in this case.
- All three of the temporary signal heads controlling Vela's movement on the day in question were more than 25.6 feet above the pavement.
- Vela drove in the southbound, far right lane, with the signal 29 feet above the pavement, 3.4 feet higher than the 25.6-foot standard.

213

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- More specifically as to the height regulations, in March 2011, IDOT adopted the 2009 MUTCD.
- IDOT's contract with Plote stated that "the latest edition of the MUTCD for streets and highways" would "apply to and govern the construction" of the project.
- The MUTCD provides, in section 4D.15: "The top of the signal housing of a vehicular signal face located over any portion of a highway that can be used by motor vehicles shall not be more than 25.6 feet above the pavement."

214

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- The MUTCD also provides that the signal heads shall be at least 15 feet above the pavement.
- Section 4D.15 does not specify whether it applies to temporary signals.
- Section 4D.32 specifically addresses temporary signals, and it is silent as to height requirements.

215

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- However, it states that the temporary signal "shall meet the physical display and operational requirements of a conventional traffic control signal."
- Section 18.09 of the MUTCD provides that the manual should not be a substitute for "engineering judgment."
- Also, the project plans state that the temporary signals were to be placed "as indicated on the temporary traffic signal plan or as directed by the engineer."

216

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Facts of the case:

- After the accident, Vela told a police officer that it was his fault.
- Vela was ticketed for disobeying a traffic control device, and he pleaded guilty to that charge.
- Gina could not testify to the accident, because it left her disabled.
- However, several witnesses were able to testify both to the accident and to the condition of the intersection that day.
- Except as noted, they described the accident consistently with Vela.

217

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- Brettman sued defendants in negligence, alleging that the improper placement of the temporary lights proximately caused the accident.
- Defendants moved for summary judgment.

218

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- Brettman filed four affidavits in opposition to summary judgment, by experts Dr. Jay Przbyla, Noyce, Dr. Jeffrey Buckholz, and Frank Burg.
- The trial court accepted Przbyla's affidavit without objection.
- On defendants' motions, the court struck Noyce's, Buckholz's, and Burg's affidavits.
- Brettman appeals the striking of only Noyce's affidavit, so we do not detail Buckholz's or Burg's affidavits.

219

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- Przbyla averred that he:
  - earned a B.S. in civil engineering from Brigham Young University and
  - a Ph.D. in transportation safety engineering from the University of Utah.
  - Since 2005, he has worked for three engineering firms specializing in transportation engineering.
  - He has been certified as a temporary traffic control supervisor,

220

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- Przbyla averred that he:
  - is an accredited accident reconstructionist, and
  - is familiar with the standard of care as well as custom and practice in the industry.
  - He has testified in other trials and depositions concerning accident reconstruction and transportation safety.

221

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- Przbyla conducted a photogrammetry study.
- The vertical heights of all three temporary signals controlling southbound traffic were in violation of the MUTCD standards and the project plans and documents.

222

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- Those top heights were:
  - 26.5 feet above the pavement (far left),
  - 29 feet above the pavement (far right), and
  - 32 feet above the pavement (near right).
  - Additionally, the lateral positions of two of the three southbound temporary signals were not as required in the project plans.

223

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- The Noyce affidavit consisted of five paragraphs, plus attachments.
- In paragraph 1, Noyce set forth his qualifications.
- Noyce earned a B.S. and an M.S. in civil and environmental engineering from the University of Wisconsin-Madison;
- he earned a Ph.D. in civil engineering from Texas A&M University.

224

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- He is currently the department chair for civil and environmental engineering at the University of Wisconsin-Madison.
- For the past 34 years, he has designed roadway systems and performed academic research on transportation design, including traffic control devices and human factors.
- He has conducted nearly 200 research studies at the University of Wisconsin on transportation safety, traffic signal operations, and human factors.

225

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Plaintiffs' Pleas:

- Noyes concluded his lengthy deposition with the following conclusion:
  - *"It is my opinion that the placement and lack of conspicuity of the temporary traffic signals impaired a driver's ability to observe the temporary traffic control indications and were in fact a cause of Mr. Vela's failure to observe the necessary traffic signal indication information prior to the crash."*

226

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Defendants' Pleas:

- The height of the lights merely created a condition but were not the proximate cause of this accident.
- The proximate cause of this accident was Vela's failure to observe not only the temporary lights but also Gina's vehicle until the moment of impact.

227

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Defendants' Pleas:

- Defendants do raise the legitimate argument that the disputed facts upon which Noyce based his opinion were not supported by enough evidence to raise a jury question as to those facts.
- The disputed facts were, in their view, not facts at all but mere conjecture and speculation.
- Again, this is a legitimate argument, but it is unavailing.

228

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Defendants' Pleas:

- Defendants argue that Vela's testimony does not support Noyce's opinion because Vela admitted to seeing the light in statements at the scene and in pleading guilty to disobeying a traffic control device.
- We reject defendants' argument that Vela's guilty plea to a traffic offense constitutes a judicial admission defeating Noyce's affidavit.
- A guilty plea to a traffic offense can be a judicial admission.

229

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Defendants' Pleas:

- The parties agree that the scope of defendants' duties was defined by their respective contracts.
- The duty owed by a contractor in a negligence action is defined by the scope of the contract. Ferentchak v. Frankfort, 105 Ill. 2d 474, 482 (1985).
- Defendants acknowledge that the contract required them to follow the MUTCD requirements, but they dispute that the MUTCD placed a height limitation on temporary lights.
- Defendants also assert that section 18.09 of the MUTCD and certain provisions of the contracts allow for deviation from the provisions and plans when warranted by "engineering judgment."

230

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Defendants' Pleas:

- We recognize that the record contains evidence supporting defendants' position.
- Section 4D.15 of the MUTCD does not specify that the height limitation applies to temporary lights.
- Emery testified that the MUTCD height limitation does not apply to temporary lights.

231

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Defendants' Pleas:

- Even if it did, some deviation based on engineering judgment may be permitted.
- Also, certain plan drawings show only the minimum, 17-foot height.

cr

232

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Court Rulings:

- The contract adopted the MUTCD.
- The MUTCD height limitation could be interpreted to apply to temporary lights.
- Although section 4D.15, with its height requirements, did not specify that it applied to temporary lights, section 4D.32 stated that temporary lights were to meet the same physical display requirements as conventional signals.

233

2023 ISPE Boot Camp

BRETTMAN V VIRGIL COOK

Court Rulings:

- Guge testified that the MUTCD's 25.6-foot height limitation applies to wire-mounted as well as permanent signals.
- Janikowski testified to a document entitled "IDOT District 1 Notes for Temporary Signals."
- Appendix B, Note 5, of that document requires that the top of a signal be no more than 25.6 feet above the pavement, the same height as set forth in the MUTCD.

234

BRETTMAN V VIRGIL COOK

Court Rulings:

- Moreover, even if engineering judgment would have allowed for the lights to be placed higher than 25.6 feet above the pavement, there is no evidence that the placement here was a result of judgment rather than inattention.
- Defendants do not point to the testimony of any engineer that he or she purposefully placed the lights as high as 32 feet above the pavement and believed the deviation was warranted based on factors x, y, and z.

235

BRETTMAN V VIRGIL COOK

Court Rulings:

- Here, in contrast, defendants accept that the scope of their contract with IDOT required them to install the temporary lights according to project specifications.
- There is a question as to what those project specifications entailed, and, as such, summary judgment was not appropriate.

236

BRETTMAN V VIRGIL COOK

Court Rulings:

- For the reasons stated, we reverse the trial court's grant of summary judgment and remand for further proceedings.
- Reversed and remanded.

237

BALL V TENG & ASSOC.

No. 1-09-3477 (2011)

238

BALL V TENG & ASSOC.

- Facts of the Case
  - David Ball, Special Administrator of the Estate of Tina Ball, Deceased was the Plaintiff-Appellant
  - Teng & Assoc, Inc., United Rental Highway Technologies, Inc., and Bowman Barrett & Assoc., Inc. were the Defendants-Appellees
  - Appeal from the Circuit Court of Cook County

239

BALL V TENG & ASSOC.

- Facts of the Case
  - Trial Court granted a summary judgment for the defendants.
  - Trial Court held that the plaintiff failed to show sufficient facts to establish that the alleged defendants' negligence was a proximate cause of the accident that caused the death of the plaintiff's wife.
  - Plaintiff is appealing from the circuit court of Cook County's grant of summary judgment.

240

2023 ISPE Boot Camp

BALL V TENG & ASSOC.

- Facts of the Case
  - Tina Ball was employed as a traffic flagger by K-Five Construction Co. at a roadway resurfacing site located on I-57 near 107th Street.
  - On Sept. 15, 2003, at approximately 3:40p, Tina was struck at the construction site by a car driven by a drunken driver.

241

2023 ISPE Boot Camp

BALL V TENG & ASSOC.

- Facts of the Case
  - The driver's BAL was 0.191 (legal limit is 0.08)
  - An opened beer bottle and an unopened can of beer were inside of the driver's car (from a news account of the accident).
  - Tina died from the injuries that she sustained in the accident.

242

243

244

245

246

2023 ISPE Boot Camp

BALL V TENG & ASSOC.

- Facts of the Case
- Teng and Assoc. prepared the traffic plans for the project.
- United Rental Highway Technologies, Inc., were subcontracters for the traffic control warning signs and barricades for K-5
- Bowman and Barrett and Assoc., Inc. monitored K-5's compliance with the plan specifications.

247

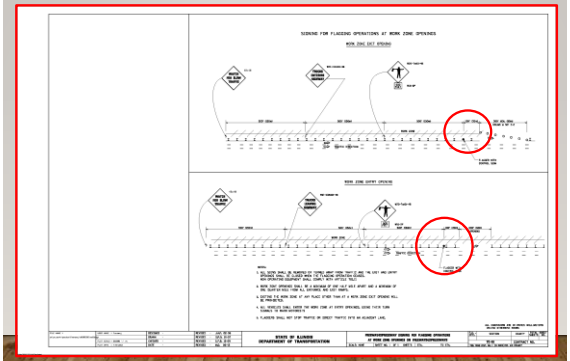
2023 ISPE Boot Camp

BALL V TENG & ASSOC.

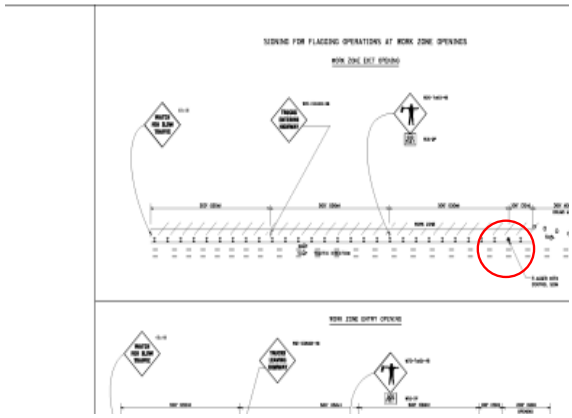
- Facts of the Case
  - At the time of the accident, Tina was part of the milling crew that was removing the top layer of the old pavement on the left shoulder of the highway.
  - The left lane and shoulder were closed to traffic.
  - Tina's job as a flagger was to help slow traffic to allow the trucks to periodically enter and exit the job site.
  - Traffic Control Standard that applied was TC-18.

248

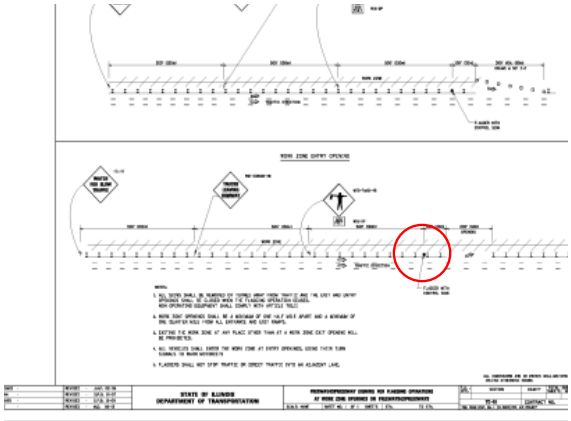
2023 ISPE Boot Camp



249



250



251

2023 ISPE Boot Camp

BALL V TENG & ASSOC.

- Facts of the Case
  - At the time of the accident, there were no trucks entering or exiting the milling site
  - Tina was not performing flagging duties
  - Tina was standing inside the work zone, 2-5 feet behind a barricade.
  - The driver entered the highway from a ramp and lost control of his vehicle

252

BALL V TENG & ASSOC.

- Facts of the Case
  - The driver's car hit a construction barricade, struck Tina and then came to rest after colliding with a construction truck.
  - The driver estimated he was traveling at 50-60 mph. Construction zone speed limit was 45 mph.

253

BALL V TENG & ASSOC.

- Plaintiff's Pleadings:
  - Defendants failed to design, implement, effectuate and enforce a safe and proper traffic control plan at the highway construction site where his wife was killed while working as a traffic flagger.
  - Plaintiff alleged that the defendant's negligence proximately caused the death of his wife who died after she was hit by a car operated by an intoxicated driver.

254

BALL V TENG & ASSOC.

- Plaintiff's Pleadings:
  - The three defendants were negligent in providing an unsafe working condition which proximately caused the accident.
  - Defendants failed to provide and maintain a safe and proper traffic control plan.
  - David proffered deposition testimony of two alleged experts who suggested alternate methods of traffic control that were contrary to IDOT approved plans

255

BALL V TENG & ASSOC.

- Plaintiff's Pleadings:
  - The experts further surmised that the traffic plan was not properly implemented by the defendants.
  - The experts based their opinions on aerial video and photographs produced after the accident that the experts admitted did not depict the area at the time of the accident.

256

BALL V TENG & ASSOC.

- Plaintiff's Pleadings:
  - Further, the experts based their opinions on a state trooper's report that only documented a limited crash environment beginning from the point where the driver's car first impacted the barricade.
  - Both of the experts admitted that they could not speculate as to what caused the driver to lose control of the vehicle.

257

BALL V TENG & ASSOC.

- Defendants' Pleadings:
  - The plaintiff did not plead sufficient facts to show that the defendants owed a duty to exercise ordinary care for Tina's safety, that the defendants breached that duty and that the breach was the proximate cause of Tina's injuries and death.
  - The driver's decision to drive a car while intoxicated was the intervening act and proximate cause of Tina's death.

258

BALL V TENG & ASSOC.

- Matters of Law:
  - In order to prove negligence on the part of a defendant, plaintiff must prove:
    - The defendant owed the plaintiff a duty
    - The defendant breached that duty
    - The breach proximately caused the plaintiff's damages

259

BALL V TENG & ASSOC.

- Court Rulings:
  - We agree with the trial court that, as a matter of law, the errant driving was the intervening and sole cause of Tina's injuries and subsequent death.
  - Even if we assume that each of the defendants owed a duty of care to Tina that they breached, we cannot say that their actions were either the cause in fact or the legal cause of the accident.

260

BALL V TENG & ASSOC.

- Court Rulings:
  - Their conduct only created the condition under which the driver's independent act caused the accident.
  - We agree with the parties that this accident was a senseless tragedy for which a man who decided to drive a vehicle while drunk is now deservedly serving a prison sentence.
  - However, we conclude that the trial court did not err when it granted summary judgment for the defendants

261

BALL V TENG & ASSOC.

- Court Rulings:
  - For the reasons stated, we affirm the judgment of the circuit court of Cook County
  - Ruling for the defendants.

262

SHANK V FIELDS

No. 4-06-0340 (2007)

263

SHANK V FIELDS

- Facts of the Case:
  - Jason A. Shank, Plaintiff-Appellant
  - H. C. Fields, Defendant (Not a party to the appeal)
  - Champaign Asphalt, Defendant-Appellee
  - Appeal from Circuit Court of Champaign County

264

2023 ISPE Boot Camp

SHANK V FIELDS

- Facts of the Case:
  - On May 25, 2001, Champaign Asphalt was doing road construction work on I-74 near exit 192.
  - Contract required all lanes of traffic shall be open on any legal holiday, including the Friday before Memorial Day, beginning at 3p.
  - May 25 was the Friday before Memorial Day
  - A major multivehicle accident occurred at 3:35p

265

266

2023 ISPE Boot Camp

SHANK V FIELDS

- Facts of the Case:
  - AADT was 34400 (2009)
  - 24% trucks
  - Only one lane was open.
  - The reason for the delay was an Athey Loader unexpectedly broke down.

267

2023 ISPE Boot Camp

268

2023 ISPE Boot Camp

SHANK V FIELDS

- Facts of the Case:
  - At the time of the accident, traffic, which was required to merge from two lanes to one lane, was backed up for 1.34 miles.
  - Rex Nichols, driving a semi, struck the line of vehicles, hitting the car in which plaintiff was a passenger and the car driven by defendant Fields.
  - Nichols had been driving about 57 MPH and did not reduce his speed before colliding with the vehicles.

269

2023 ISPE Boot Camp

SHANK V FIELDS

- Facts of the Case:
  - The road was level and the weather was clear
  - Nichols knew in advance that traffic would be stalled; he had driven that same stretch of highway three times in the last two months. He was also warned over his radio.
  - Proper traffic control devices were in place for the lane closure.
  - Cautionary signs indicated an upcoming lane merger at three miles, two miles and one-half mile.

270

2023 ISPE Boot Camp

SHANK V FIELDS

- Facts of the Case:
  - Plaintiff was seriously injured in the accident.
  - Plaintiff's parents entered into an agreement with Nichols and his employer for $427,500.
  - Upon reaching the age of majority, plaintiff brought action against Champaign Asphalt.

271

2023 ISPE Boot Camp

SHANK V FIELDS

- Facts of the Case:
  - Champaign Asphalt (CA) filed a motion for summary judgment.
  - Trial court granted the motion, stating, *"the alleged negligence of CA did nothing more than create a condition making this accident possible; and the intervening negligence of Mr. Nichols broke that causal chain; and therefore, it was the sole proximate cause."*
  - Plaintiff appeals

272

2023 ISPE Boot Camp

SHANK V FIELDS

- Plaintiff's Pleadings:
  - Count I: Champaign Asphalt (CA) failed in its duty to reopen all lanes of traffic by 3:00p
  - Count II: Plaintiff was a third-party beneficiary to contract between IDOT and CA requiring that all lanes of travel be open from 3:00p on Friday, May 25th to midnight on Monday, May 28.

273

2023 ISPE Boot Camp

SHANK V FIELDS

- Plaintiff's Pleadings:
  - It is foreseeable that accidents will occur when traffic lanes are closed, and therefore CA had a duty to have the lane open.

274

2023 ISPE Boot Camp

SHANK V FIELDS

- Court Rulings:
  - Many Illinois cases have refused to impose a duty in situations where an accident was foreseeable. It is not a breach of duty to supply electricity to a community knowing that, over time, electrocution is likely. *"The benefits of electricity outweigh the disadvantages."* Tinder v Illinois Power 325 ILL App 3d 606 (2001)

275

2023 ISPE Boot Camp

SHANK V FIELDS

- Court Rulings:
  - Municipalities are not required to build medians that would be sufficient to prevent a drunk driver from crossing over into oncoming traffic. *"The magnitude of guarding against this injury ….would be too great."* In re Estate of Elfayer 757 NE 2d 581 (2001)

276

SHANK V FIELDS

- Court Rulings:
  - Road-construction projects make travel conditions more dangerous for motorists, and accidents are certainly foreseeable. But what is the alternative? Not repairing roads? Completely closing any highway that is undergoing repairs?
  - The magnitude of the burden of preventing reckless drivers from causing harm justify a finding of no duty in this case

277

SHANK V FIELDS

- Court Rulings:
  - Certainly highway authorities have a duty to act reasonably in preventing harm to the public, even harm caused by third-party negligent drivers.
  - CA complied with that general duty here, by posting all the required warning signs.
  - CA was required by its contract to attempt to have all lanes open by 3p., but would not have acted reasonably if it had opened the lanes before they were ready.

278

SHANK V FIELDS

- Court Rulings:
  - "Legal cause" is required for the imposition of liability and there was no "legal cause" in this case. The failure to have both lanes open was not so closely tied to plaintiff's injury that CA should have responsibility for it.
  - The failure to have the lane open was only a condition that allowed this accident to happen, not a cause.
  - The actions of CA in closing the lane did not promote or encourage Nichols to act in the way he did.

279

SHANK V FIELDS

- Court Rulings:
  - The trial court properly concluded that CA had no duty, either as a matter of general legal principles or by virtue of its contract with IDOT, to prevent the independent intervening act that occurred here.
  - The trial court properly concluded that CA's conduct was not a proximate cause of the injuries to plaintiff.
  - Appellate Court affirms trial court for defendants.

280

DINELLI V. COUNTY OF LAKE

2-97-0288 (1997)

281

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - Frank Dinelli and Carol Dinelli are Plaintiffs-Appellants
  - County of Lake is Defendant-Appellee
  - Circuit Court of Lake County dismissed the Plaintiffs' complaint against the Defendant
  - Plaintiffs appealed.

282

2023 ISPE Boot Camp

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - Complaint alleged that the County was negligent and willful and wanton in its design and maintenance of a midblock bicycle crosswalk.
  - Plaintiff Frank Dinelli was struck and injured by a motor vehicle while walking his bicycle across the crosswalk.
  - The trial court found that the crosswalk had been intended for recreational use and therefore concluded that the County was immune from liability pursuant to Tort Immunity Act.

283

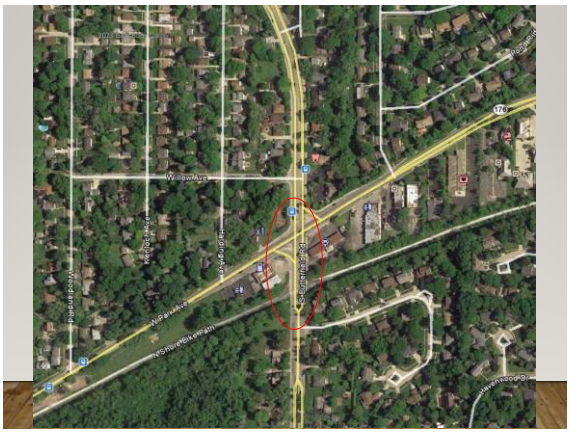
2023 ISPE Boot Camp

DINELLI V. COUNTY OF LAKE

- Tort Immunity Act:
  - (745 ILCS 10/3-106) (from Ch. 85, par. 3-106)
    Sec. 3-106. Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is **guilty of willful and wanton conduct proximately causing such injury**. (Source: P.A. 84-1431.)

284

285



286

Butterfield Road looking N.

287

Butterfield Road looking W at NSBP

288

Butterfield Road NB Lane looking at accident site

289

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - On September 23, 1994, Frank Dinelli was riding his bicycle in an easterly direction along the North Shore Bicycle Path (NSBP) in Libertyville.
  - In 1994, the NSBP included a midblock crosswalk across Butterfield Road, approximately 240 feet south of the intersection of Butterfield Road and IL Rte 176.
  - Street signs at the crosswalk warn motorists on Butterfield Road where the NSBP crosses the road.

290

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - As the plaintiff attempted to ride his bicycle across the crosswalk, he was struck by a NB vehicle being driven by Louise Rejc.
  - According to witness at the time the plaintiff attempted to cross the crosswalk, NB traffic on Butterfield Road was stopped for a red light at IL Rte 176.
  - The witness testified that the plaintiff entered the crosswalk and proceeded to cross Butterfield Road while the NB traffic remained stopped.

291

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - As the plaintiff was crossing the SB lane, he was struck by Rejc's vehicle.
  - Rejc was allegedly traveling NB in the SB lane in order to more quickly reach the LT lane at the intersection with IL Rte 176.
  - As a result of the collision, the plaintiff suffered a broken hip, broken pelvis, three fractured ribs, and other internal injuries requiring hospitalization for over six weeks.

292

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - Count I and II of the plaintiffs' complaint alleged that the county was negligent in its design and maintenance of the NSBP
  - In Count III and IV, the plaintiffs alleged that the County's conduct had been willful and wanton
  - The plaintiffs alleged that the county:
    - Failed to use traffic and pedestrian counts
    - Located the crosswalk in a high volume area
    - Installed the crosswalk without the recommendation of the County Engineer
    - Failed to design the crosswalk according to MUTCD

293

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - In Counts I and II, Frank Dinelli sought relief for his personal injuries
  - In Counts III and IV, Carol Dinelli sought relief for the loss of her husband's services, society, companionship and conjugal relationship.

294

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - On July 17, 1996, the County filed a motion for summary judgment as to Counts I and II
  - In its motion, the County asserted that the crosswalk was part of the NSBP and as such, the County was immune under 3-106.
  - Attached to the motion was the affidavit of Martin Buehler, the county engineer for Lake County.

295

DINELLI V. COUNTY OF LAKE

- Buehler's affidavit:
  - Buehler stated that the NSBP included the crosswalk across Butterfield Road.
  - Buehler averred that the NSBP, including the crosswalk, was intended and permitted to be used by the citizens of Lake County for recreational purposes.

296

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - On September 18, 1996, the trial court denied the County's motion for summary judgment.
  - On September 26, 1996, the County filed a motion requesting the trial court to reconsider its ruling
  - The county also filed a motion to dismiss counts III and IV on the grounds that the allegations were insufficient to support an action for willful and wanton conduct.

297

DINELLI V. COUNTY OF LAKE

- Facts of the case:
  - On October 23, 1996, the trial court granted the motion to reconsider and entered summary judgment on behalf of the County on Counts I and II
  - The trial court also granted the County's motion to dismiss Counts III and IV.
  - The trial court gave the plaintiffs leave to file an amended complaint.
  - On February 19, 1997, following a hearing, the trial court dismissed the plaintiffs' fourth amended complaint.
  - Plaintiffs filed a timely notice of appeal.

298

DINELLI V. COUNTY OF LAKE

- Appellate Court Rulings:
  - We conclude that the crosswalk was part of the NSBP which was designed and implemented for recreational purposes.
  - The trial court properly entered a judgment in favor of the County as to counts I and II.

299

DINELLI V. COUNTY OF LAKE

- Appellate Court Rulings:
  - As to Counts III and IV, in order to sufficiently plead a cause of action for willful and wanton conduct a plaintiff must allege that a defendant engaged in a course of action that proximately caused the injury.
  - A public entity may be found to have engaged in willful and wanton conduct only if it has been informed of a dangerous condition, knew others had been injured because of the condition, or if it intentionally removed a safety device or feature from property used for recreational purposes.

300

DINELLI V. COUNTY OF LAKE

- Appellate Court Rulings:
  - In light of these authorities, we conclude that the County's alleged misconduct in the instant case did not rise to the level of willful and wanton.
  - For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

301

BOUB V TOWNSHIP OF WAYNE

Docket No. 84246 (1998)

302

BOUB V TOWNSHIP OF WAYNE

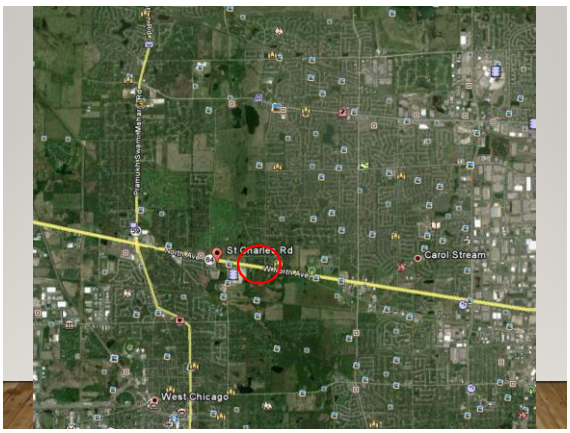
- Facts of the Case:
  - Jon P. Boub, Appellant
  - Township of Wayne, et al, Appellees
  - Circuit Court granted the Defendants' motion for summary judgment and the appellate court affirmed
  - Plaintiff petitions for leave to appeal

303

BOUB V TOWNSHIP OF WAYNE

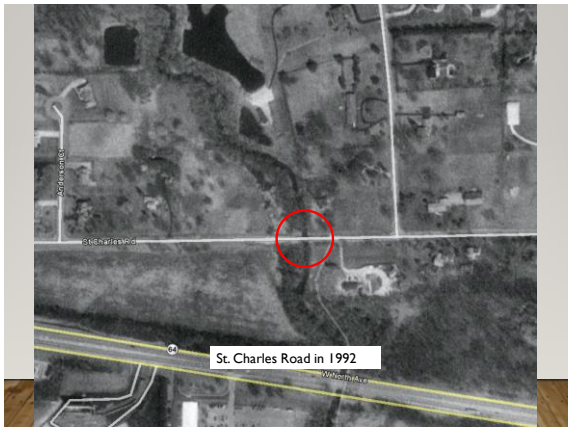
- Facts of the Case:
  - Boub was riding his bicycle on the morning of Sept. 8, 1992 on St. Charles Road in Wayne Township, Du Page County
  - The accident occurred as Boub was traveling across a one-lane bridge
  - The surface of the bridge consisted of wood planking
  - Sometime before the accident, asphalt patching between the planks had been removed as a part of a bridge renovation project.
  - The Plaintiff was thrown from the bicycle when his front tire became stuck between two of the planks on the bridge.

304



305

306



307

BOUB V TOWNSHIP OF WAYNE

- Facts of the Case:
  - The Plaintiff sought recovery in negligence and willful and wanton misconduct and alleged that the Defendants violated a duty owed to the Plaintiff under section 3-102(a) of the Tort Immunity Act
  - The Defendants moved for summary judgment
  - Following a hearing, the trial judge granted the Defendants' motion and entered summary judgment in their favor.

308

BOUB V TOWNSHIP OF WAYNE

- Plaintiff's Pleadings:
  - The League of Illinois Bicyclists and the Chicagoland Bicycle Federation submitted *amici curiae* in support of the Plaintiff.
  - The Plaintiff argues that the lower courts erred in ruling that the complaint was barred by the immunity provisions of the Tort Immunity Act.

309

BOUB V TOWNSHIP OF WAYNE

- 745 ILCS 10/3-102 :
  - (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

310

BOUB V TOWNSHIP OF WAYNE

- Facts of the Case:
  - Plaintiff appealed, and the appellate court affirmed.
  - Appellate court concluded that the Defendants were immune from liability under Section 3-102(a) of the Tort Immunity Act.

311

BOUB V TOWNSHIP OF WAYNE

- Plaintiff's Pleadings:
  - In *Vaughn v City of West Frankfort*, "Section 3-102(a) imposes a duty of ordinary care on municipalities to maintain property for uses that are *both permitted* and *intended*"
  - The present Plaintiff must qualify as both a permitted and an intended user of the property if he is to maintain the action alleged against the Defendants.

312

BOUB V TOWNSHIP OF WAYNE

- Defendant's Pleadings:
  - The Plaintiff, as a bicyclist, was not an intended user of the road and bridge, and that he was, at most, only a permitted user.
  - The question before the court concerns whether the Plaintiff may also be characterized as an intended user.

313

BOUB V TOWNSHIP OF WAYNE

- Plaintiff's Pleadings:
  - The Plaintiff asserts that the rights of bicycle riders and vehicle drivers are generally coextensive.
  - He observes that bicyclists have traditionally used roads and highways without restriction, and he sites state statute provision that grants bicyclists the rights and duties of drivers of vehicles.
  - Bicyclists were not excluded from riding on the road where the present accident occurred.

314

BOUB V TOWNSHIP OF WAYNE

- Plaintiff's Pleadings :
  - The Plaintiff notes that section 11-1502 of the state Vehicle Code provides that "*every person riding a bicycle upon a highway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Code.*"

315

BOUB V TOWNSHIP OF WAYNE

- Defendants' Pleadings:
  - The Defendants do not concede that state statutes are applicable in determining Wayne Township's intent regarding the use of the road and bridge in this case.
  - The Defendants argue that state statutes, to whatever extent they might be relevant to this case, fail to sustain the Plaintiff's position.

316

BOUB V TOWNSHIP OF WAYNE

- Plaintiff's Pleadings:
  - *Amici* observe that the portion of St. Charles Road involved in this case was designated "a through street generally suitable for bicycling" by the Du Page County Board in 1983.

317

BOUB V TOWNSHIP OF WAYNE

- Plaintiff's Pleadings:
  - Citing *Molway v City of Chicago*, the Plaintiff contends that bicyclists must be considered intended and permitted users of Illinois streets and highways.
  - The Plaintiff in that case was injured when the bicycle he was riding hit a hole in the street.
  - Plaintiff was awarded damages in *Molway*.

318

BOUB V TOWNSHIP OF WAYNE

- Supreme Court Rulings :
  - The supreme court ruled *Molway* was not persuasive in the present case, citing the accident in *Molway* occurred in 1905, long before motorized vehicles became the predominant users of Illinois streets and highways.

319

BOUB V TOWNSHIP OF WAYNE

- Supreme Court Rulings:
  - Many road conditions that do not pose hazards to vehicles may represent special dangers to bicycles, and imposition of liability in this case would, we believe, open the door to liability for a broad range of pavement conditions, such as potholes, speed bumps, expansion joints, sewer grates, and rocks and gravel, to name but a few.

320

BOUB V TOWNSHIP OF WAYNE

- Supreme Court Rulings :
  - By the same token, we believe that imposition of municipal liability in the circumstances shown here is more appropriate for the legislature to initiate, if it is to be done at all.
  - In this regard, it is appropriate to consider the potentially enormous costs both of imposing liability for road defects that might injure bicycle riders and of upgrading road conditions to meet the special requirements of bicyclists.

321

BOUB V TOWNSHIP OF WAYNE

- Supreme Court Rulings:
  - The provisions cited by the Plaintiff is entirely consistent with the conclusion that bicyclists are permitted, but not intended, users of the roads, in the absence of specific markings, signage, or further manifestation of the local entity's intent that would speak otherwise

322

BOUB V TOWNSHIP OF WAYNE

- Supreme Court Rulings :
  - In determining Wayne Township's intent, it is necessary to look at pavement marking, signs, and other physical manifestations of the intended use of the property.
  - Just as the presence or absence of special pavement markings and signs is relevant in determining whether pedestrians are intended users of streets, so too do we believe that the presence or absence of pavement markings and signs is relevant here in determining whether the Plaintiff was an intended user

323

BOUB V TOWNSHIP OF WAYNE

- Supreme Court Rulings :
  - In the present case, there is nothing in the roadway or bridge that would suggest that it was intended for use by bicycles.
  - No special pavement markings or signs indicated that bicyclists, like motorists, were intended to ride on the road or bridge, or that bicycles, rather than vehicles, were the intended users of the route.

324

BOUB V TOWNSHIP OF WAYNE

- Supreme Court Rulings :
  - For the reasons stated, the judgment of the appellate court, affirming the judgment of the circuit court of Du Page County, is affirmed.
  - Found for the Defendant

325

PUTNAM V. VILLAGE OF BENSENVILLE

337 Ill app (3d) 197 2003

326

PUTNAM V. VILLAGE OF BENSENVILLE

- Plaintiffs-Appellants:
  - Albert P. Putman and Ardelle J. Putman
- Defendants-Appellees:
  - Village of Bensenville
  - Eagle Concrete Contractors, Inc.
  - James J. Benes and Associates, Inc.

327

PUTNAM V. VILLAGE OF BENSENVILLE

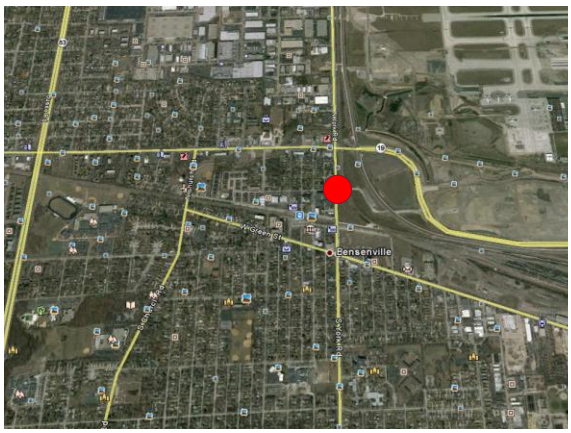
- Facts of Case:
  - Plaintiffs, Albert P. Putman and Ardelle J. Putman instituted an action in the circuit court of Du Page County following a fall that rendered Albert a quadriplegic.
  - Plaintiffs named as Defendants, among others, the Village of Bensenville, Eagle Concrete Contractors, Inc. and James J. Benes & Assoc., Inc.
  - Eagle was a subcontractor hired on a road improvement project in Bensenville, and Benes was the engineering firm hired by the Village for the project.
  - A number of other defendants settled or were granted summary judgment and are not parties to this appeal.

328

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - Defendants moved for summary judgment.
  - Trial court granted defendants' motions, and plaintiffs now appeal.

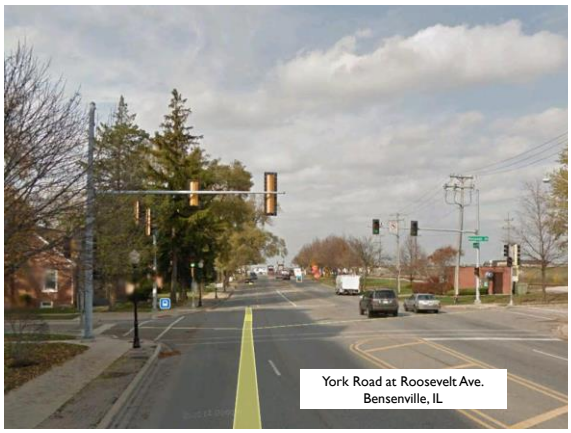
329



330

331

332



333

334

2023 ISPE Boot Camp

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - On November 9, 1995, Albert was to attend a meeting at the VFW building in Bensenville.
  - The meeting was to commence at 8:00p
  - He arrived about 7:30p and parked in a lot across the street.
  - As he approached the intersection to cross the street, he noted that the pedestrian crosswalk and traffic signals were working, but the overhead lighting at the intersection was not.
  - Albert stated that the intersection was dark and shadowy.
  - Albert pressed the pedestrian signal button and waited until the walk signal came on before crossing the intersection.

335

2023 ISPE Boot Camp

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - When he was about halfway across the intersection, the signal changed to "*don't walk*."
  - Albert related that he increased his pace "*a trifle*," *but "didn't hurry that much*."
  - Albert acknowledged that he was familiar with the intersection due to the number of times he had previously traversed it, which he estimated at approximately 30.
  - Albert stated that the signal appeared to be quicker than usual on the night of the accident.
  - In fact, the signal had been damaged about three weeks earlier, and a temporary controller had been installed.

336

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - This controller would give a pedestrian the walk signal for between 3 and 8 seconds and then allow an additional 15 seconds to cross the intersection.
  - On the VFW side of the intersection, Bensenville had installed a ramp to make the sidewalk handicapped accessible.
  - The ramp consisted of a sloped portion of the sidewalk that came down to meet the road.
  - There was a gutter at the base of the ramp.
  - As Albert was leaving the roadway, he tripped on the front edge of the ramp where it adjoined the gutter.

337

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - He fell forward and struck his head on a concrete parking block.
  - As a result, he was paralyzed from the neck down.
  - The record in this case is voluminous and additional facts will be discussed as they pertain to the issues raised by plaintiffs.

338

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - The trial court granted summary judgment in favor of all three defendants.
  - Summary judgment is appropriate only where no genuine issues of material fact exist and the movant is entitled to judgment as a matter of law.
  - As the issues pertaining to the separated defendants are discrete, we will address them separately.
    - Bensenville (Village)
    - Eagle (Contractor)
    - Benes (Engineer)

339

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - The evidence, viewed in the light most favorable to plaintiffs, shows that there was a one-inch lip between the ramp and the gutter.
  - Plaintiffs' expert, Paul Box, produced a diagram showing this change in elevation.
  - The upper half of the inch reflected the distance where the ramp sloped downward, and only the lower half was perpendicular to the gutter.
  - Defendants produced testimony indicating that the lip was smaller; however, as this appeal involves a summary judgment, we must accept the testimony of plaintiffs' expert.

340

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - We also note that Albert estimated the distance from the lowest point in the gutter to the ramp at two to three inches.
  - This measurement is not relevant, as Albert asserts that he tripped on the front edge of the ramp.
  - Moreover, it is not surprising that, to allow for drainage, the lowest point of the gutter was somewhat lower than the ramp.

341

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - Thus, for the purpose of resolving this issue, we will assume that a one-inch lip existed at the front edge of the ramp. Numerous cases have held that such defects fall within the de-minimis rule.
    - *"Turning to the facts in the case before us, we believe that the city's evidence, a 1 1/8 inch maximum height variation, would indicate that, in view of the surrounding circumstances, no cause of action would lie due to the minimal nature of the defect." (Warner v City of Chicago, 72 Ill 2d 100)*
    - *"The point at which liability attaches in such cases is when the defect approaches two inches." (Birck, 241 Ill App 3d 122)*
  - In this case, a one inch defect lies within the ambit of the de-minimis rule and is not actionable.

342

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - Plaintiffs do not seriously attempt to argue that the one-inch defect would not fall within the de-minimis rule. Instead, they attempt to argue that the rule has no application to the case at bar. To this end, they advance two arguments.
    - First, they argue that the ramp was a special statutorily mandated handicapped ramp
    - Second, they contend that certain regulation that state how such ramps should be constructed should control this action and trump the de-minimis rule.
  - We find both arguments unpersuasive.

343

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - First, we attach significance to the fact that Albert tripped on the ramp rather than on some other portion of the sidewalk.
  - Plaintiffs attempt to distinguish the ramp from the balance of the sidewalk by pointing out that the design of such ramps is set forth in detail in certain administrative regulations.
  - However, other portions of sidewalk are also governed by exacting standards.
  - Thus, the fact that the ramps are heavily regulated provides no basis for distinguishing them from the rest of the sidewalk.

344

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - More fundamentally, adopting the position advocated by plaintiffs would lead to an absurdity. A sidewalk ramp is, obviously, intended to provide access to a sidewalk.
  - Thus, the same individuals who traverse the ramp also use the sidewalk.
  - If we were to exclude ramps from the de-minimis rule, an individual who tripped on a defect in the ramp would have a cause of action while one who tripped on a defect in the very next slab would not.
  - The ramp is, in fact, part of the sidewalk.
  - Accordingly, we reject plaintiffs' contention that the mere fact that the accident occurred on a ramp makes the de-minimis rule inapplicable.

345

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - Plaintiffs point out that, in addition to the defect in the ramp, overhead lighting at the intersection was not functioning and the pedestrian crossing signal was, as Albert described, "faster" than usual on the night of the accident.
  - Regarding the lighting, there is no duty to illuminate a defect that is not otherwise actionable. (Swett v. Village of Algonguin 169 Ill. App. 3d 78).
  - A contrary rule would require a municipality to install lighting over every nonactionable defect in a sidewalk, substantially undercutting the purpose of the de-minimis rule.

346

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - We question whether the quicker walk signal was causally related to Albert's injury, as plaintiffs point to nothing to suggest that a properly operating signal would allow a pedestrian to clear the intersection completely before it switched back to "don't walk."
  - Accordingly, we hold that, in accordance with the de-minimis rule, Bensenville had no duty to remedy the minor defect in the ramp. We affirm the decision of the trial court granting summary judgment to the Village.

347

PUTNAM V. VILLAGE OF BENSENVILLE

- Eagle:
  - Plaintiffs next contend that the trial court erred in granting summary judgment in favor of Eagle. Plaintiffs contend that an issue of fact exists as to whether Eagle constructed the ramp in accordance with applicable plans and specifications.
  - Eagle makes two responses.
    - First, it asserts that there is no evidence in the record to establish that the defect in the ramp existed at the time it completed the ramp.
    - Second, it argues that it, like the Village, is entitled to the benefit of the de-minimis rule.
  - We disagree with both contentions, thus, we reverse the order of the trial court granting summary judgment to Eagle.

348

PUTNAM V. VILLAGE OF BENSENVILLE

- Eagle:
  - Eagle contends that no issue of material fact exists as to whether it complied with the plans. In support of this position, Eagle points to the testimony of several witnesses who inspected the ramp around the time Eagle completed its work.
  - Contrary evidence exists in the record. Robert Tarosky, an engineer retained by plaintiffs as an expert witness, averred that the ramp had a lip in excess of one-quarter of an inch and that this defect violated the applicable standard.
  - Hence, we are presented with a conflict in the evidence, making summary judgment inappropriate.
  - Therefore, we reverse the decision of the circuit court granting Eagle's motion of summary judgment.

349

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - Regarding Benes, the trial court granted summary judgment on the basis of the following provision in the contract under which Benes agreed to provide inspection services for the project:
    - *"Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between PUBLIC AGENCY and any other party concerning this project, the ENGINEER shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures or construction nor shall the ENGINEER be responsible for the acts or omissions of PUBLIC AGENCY provided that the ENGINEER has properly executed his duties."*

350

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - *ENGINEER shall not be responsible for the failure of the PUBLIC AGENCY, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the project documents or any other agreement concerning the project.*
  - The trial court found that the duty of Benes regarding the project was set forth in the contract, and, thus the above-cited provision limited Benes's liability.

351

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - Plaintiffs attempt to avoid the effect of this disclaimer by distinguishing between the acts of Benes and those of Eagle. Plaintiffs assert that their action against Benes is not based on Eagle's failure to comply with the plans for the ramp. Instead, they claim that their action is based on Benes's own failure to properly inspect the ramp.
  - Virtually every error in construction could be recast and advanced against Benes as a failure to supervise or inspect the project.
  - We cannot find that the parties intended such a result.
  - Accordingly, we hold that the disclaimer set forth above is effective to relieve Benes of liability on the present issue.

352

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - The trial court properly granted summary judgment in favor of Benes.

or

353

PUTNAM V. VILLAGE OF BENSENVILLE

- Final Ruling:
  - In light of the foregoing, we affirm the decision of the circuit court of Du Page County granting summary judgment to Bensenville and Benes.
  - We reverse the grant of summary judgment to Eagle and remand this portion of the cause for further proceedings.

354