IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Mediha Cosovic,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 4327
	)	
Village of Skokie, a municipal corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Municipalities owe no duty to drivers whose views are obstructed by vegetation or other objects. The plaintiff in this case claims the defendant failed to maintain trees and allowed other objects to obscure her view of vehicular traffic at an intersection. Since the defendant owed the plaintiff no duty, the motion to dismiss must be granted with prejudice.

Facts

On September 21, 2018, Mediha Cosovic drove a car south on Elmwood Street near the intersection of Searle Parkway in the Village of Skokie. Cosovic saw a stop sign and came to a complete stop at the intersection. She then proceeded slowly into the intersection, at which time a car driven east on Searle Parkway by David Olstein struck Cosovic's car. Cosovic suffered injuries as a result of the collision.

On November 17, 2019, Cosovic filed her first amended complaint against Skokie. Cosovic alleges Skokie owed her a duty of care to maintain its property in a reasonably safe condition. She claims Skokie breached its duty by failing to: (1) remedy the unsafe condition properly; (2) supervise and inspect the area; (3) maintain the intersection in a safe condition; (4) inspect the

intersection; (5) maintain the intersection in a good and safe condition; (6) warn of the intersection's unsafe condition; and (7) maintain the traffic control signs in violation of the Local Governmental and Governmental Employees Tort Immunity Act and Skokie's municipal code.

On January 11, 2021, Skokie filed a combined motion to dismiss. See 735 ILCS 5/2-619.1. Pursuant to Code of Civil Procedure section 2-615, Skokie argues that it owed Cosovic no duty of care; pursuant to section 2-619, Skokie argues that neither the Tort Immunity Act nor the village code imposes on Skokie any duty of care.

In her response brief, Cosovic attached a sworn affidavit. She avers that she "came upon a stop sign" at the Elmwood-Searle intersection and came to a complete stop. She explains that she paid extra attention looking to her right because there were tree branches, a utility pole, and a traffic barricade at or near the stop sign. Additionally, two vehicles were parked in an apartment building driveway. Cosovic avers these obstructions significantly obscured her view of eastbound traffic on Searle Parkway.

Analysis

A section 2-619.1 authorizes the filing of one pleading incorporating motions to dismiss under sections 2-615 and 2-619. 735 ILCS 5/2-619.1. A section 2-615 motion tests a complaint's legal sufficiency, while a section 2-619 motion admits a complaint's legal sufficiency, but asserts affirmative matter to defeat the claim. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21; *Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. A court considering either motion must accept as true all well-pleaded facts and reasonable inferences arising from them, *Doe v. Chicago Bd. of Ed.*, 213 Ill. 2d 19, 23-24 (2004), but not conclusions unsupported by facts, *Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). *See also Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17.

It is obvious that trees, buildings, parked vehicles, and other objects may make it difficult for drivers to see approaching cross traffic. Regardless, *Ziemba v. Mierzwa* and other cases hold that private landowners and municipalities owe no duty to prevent obstructed views of cross traffic. 142 Ill. 2d 42 (1991) (bushes obscured view of driveway from adjacent roadway); *Kirschbaum v. Village of Homer Glen*, 365 Ill. App. 3d 486 (4th Dist. 2006) (trees and brush obstructed driver's view of oncoming traffic); *Adame v. Munoz*, 287 Ill. App. 3d 181 (1st Dist. 1997) (trash dumpster obstructed driver's and cyclist's views); *Williams v. Calmark Mailing Serv., Inc.*, 240 Ill. App. 3d 452 (1st Dist. 1992) (parked trailers obscured view of railroad tracks); *Manning v. Hazenkamp*, 211 Ill. App. 3d 119 (4th Dist. 1991) (permitted parking blocked intersection views); *Cross v. Moehring*, 188 Ill. App. 3d 830 (4th Dist. 1989) (advertising sign blocked cross traffic sightlines); *Esworthy v. Norfolk & Western Ry. Co.*, 166 Ill. App. 3d 876 (4th Dist. 1988) (foliage blocked view of railroad track). Cosovic's attempts to distinguish *Kirschbaum* factually do nothing to undermine the consistent judgment of Illinois courts that property owners owe no duty to provide drivers with unobstructed views of cross traffic.

Cosovic's two statutory arguments are also fundamentally flawed. First, since the legislature enacted the Tort Immunity Act in 1965, and following the Illinois Constitution's ratification in 1970, courts have referred to the common law to identify and determine a local governmental entity's duties, if any. *See Bruns v. City of Centralia*, 2014 IL 116998, ¶ 15 (citing *Vesey v. Chicago Housing Auth.*, 145 Ill. 2d 404, 414 (1991)). *See also Village of Bloomingdale v. CDG Enterps., Inc.*, 196 Ill. 2d 484, 490 (2001); *Hess v. Flores*, 408 Ill. App. 3d 631, 638 (1st Dist. 2011); *Anthony v. City of Chicago*, 382 Ill. App. 3d 983, 988 (1st Dist. 2008). In other words, if there exists no common-law duty, there is no cause of action and no need to examine whether an immunity provision applies.

The Tort Immunity Act cannot be the basis for Cosovic's argument that Skokie owed her a duty because the statute creates

only defenses and immunities. 745 ILCS 10/1-101.1(a). The statute is not the source of duties or liabilities. *Sparks v. Starks*, 367 Ill. App. 3d 834, 838 (1st Dist. 2006); *Swett v. Village of Algonquin*, 169 Ill. App. 3d 78, 92 (2d Dist. 1988). That principle is true, in particular, as to section 3-102. *See Monson v. City of Danville*, 2018 IL 122486, ¶ 24 (quoting *Wagner v. City of Chicago*, 144 Ill. 2d 150, 151-52 (1995)).

Second, Skokie's ordinances do not establish a duty of care the village owed to Cosovic. As the court found in *Boylan v. Martindale* and applies equally here: "Plaintiff has cited no authority, nor has our research revealed any, which stands for the proposition that a public entity breaches its duty by allowing an area adjacent to an intersection to pose visual obstructions of traffic to oncoming drivers although there is a clearly visible, properly maintained traffic signal plainly observable to all drivers concerned." 103 Ill. App. 3d 335, 341 (2d Dist. 1982). Two facts are persuasive here. First, Cosovic avers in her affidavit that she saw the stop sign and came to a complete stop before entering the Elmwood-Searle intersection. Second, assuming Cosovic's testimony that obstructions blocked her view of cross traffic, at some point, as she proceeded slowly southbound, her line of vision had to have extended beyond the obstructions, permitting her to see Olstein's eastbound vehicle. Thus, the obstructions, assuming they existed, constituted merely a condition and not a cause of the collision. *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 257 (1999); *Brettman v. Virgil Cook & Son, Inc.*, 2020 IL App (2d) 190955, ¶¶ 93-94.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's motion is granted; and

2. The first amended complaint is dismissed with prejudice.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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Circuit Court 2075