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

Fernando Maldonado, as independent administrator of the estate of Nancy Rainey, deceased,	)	
Plaintiff,	)	
v.	)	No. 20 L 11298
Paul Stenson, individually and as agent, servant, and/or employee of Jam Trucking, Inc., an Illinois corporation, Jam Trucking, Inc., an Illinois corporation, Sky Chefs, Inc., a Delaware corporation, Pace Suburban Bus Service, a division of the Regional Transportation Authority, and the City of Des Plaines, a municipal corporation,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A complaint against a local governmental entity must identify a common law duty owed to the plaintiff. Even if such a duty is identified, a local governmental entity may be statutorily immune from liability. In this case, the plaintiff has failed to identify a common law duty owed by one defendant, while a second defendant is statutorily immune from liability. For those reasons, the two motions to dismiss are granted with prejudice.

Facts

On October 29, 2019, Sky Chefs, Inc. employed Nancy Rainey at its 200 East Touhy Avenue facility in the City of Des Plaines. After Rainey finished work at approximately 10:30 p.m.,

she left Sky Chefs' facility and walked to a Pace bus stop located near 333 East Touhy Avenue. To get to the south side of the street, Rainey had to cross the six traffic lanes of East Touhy Avenue. There is no designated crosswalk in the vicinity. While Rainey walked across the three westbound lanes, a semi tractor-trailer owned by Jam Trucking, Inc. and driven by Paul Stenson struck and killed Rainey.

On October 22, 2020, Fernando Maldonado, the independent administrator of Rainey's estate, filed suit against various defendants, including Pace and Des Plaines. In count four, Maldonado alleges Pace was a common carrier that owed its passengers the highest duty of care, including a duty to establish bus stops in locations with safe access. Maldonado claims Pace breached its duty by: (1) placing a bus stop at mid-block at 333 East Touhy Avenue; (2) failing to request Des Plaines or the Illinois Department of Transportation to install a crosswalk; (3) failing to request Des Plaines to install traffic control devices; (4) failing to install sufficient lighting; and (5) failing to request Des Plaines to reduce the speed limit on East Touhy Avenue.

In count five, Maldonado alleges Des Plaines owed a duty to ensure Pace placed its bus stops in locations providing passengers with safe access. Maldonado claims Des Plaines breached its duty by: (1) allowing Pace to install a mid-block bus stop at 333 East Touhy Avenue; (2) failing to install or requesting IDOT to install a marked crosswalk; (3) failing to install or requesting IDOT to install traffic control devices; (4) failing to install or requesting IDOT to install sufficient lighting; and (5) failing to post a reduced speed limit on East Touhy Avenue.

On January 8, 2021, Pace filed a motion to dismiss count four. Pace presents three central arguments that: (1) it owed Rainey no duty; (2) it is immune under the Local Governmental and Governmental Employees Tort Immunity Act (TIA) concerning placement of the bus stop; and (3) the bus stop's location did not proximately cause Rainey's death. Des Plaines also filed a motion to dismiss. Des Plaines argues that various

TIA provisions immunize the city from each of Maldonado's claims. The parties briefed both motions and provided various exhibits.

Analysis

I. Pace's Motion to Dismiss

Pace brings its no-duty argument pursuant to the Code of Civil Procedure section 2-615. 735 ILCS 5/2-615. A motion to dismiss under section 2-615 challenges a complaint's legal sufficiency within the four corners of the document. *See Doe-3 v. McLean County Unit Dist. No. 5 Bd. of Dirs.*, 2012 IL 112479, ¶ 15 (citing *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006)). A complaint is to be construed in the light most favorable to the plaintiff, and all well-pleaded facts are assumed to be true. *Id.* (citing *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003)). A section 2-615 motion to dismiss may be granted only if no set of facts can be proven that would entitle a plaintiff to recover. *Marshall*, 222 Ill. 2d at 429.

Duty is a question of law to be decided by the court. *Doe v. Coe*, 2019 IL 123521, ¶ 36; *Choate v. Indiana Harbor Belt R.R.*, 2012 IL 112948, ¶ 22. Since the TIA's enactment in 1965 and the Illinois Constitution's ratification in 1970, courts are to refer to the common law to identify and determine a local governmental entity's duties, if any.[1] *See Bruns v. City of Centralia*, 2014 IL 116998, ¶ 15 (citing *Vesey v. Chicago Housing Auth.*, 145 Ill. 2d 404, 414 (1991)). 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. Seen another way, the TIA immunizes local public entities from liability arising from

[1] The Regional Transportation Authority Act, 70 ILCS 3615, authorizes Pace's existence. 70 ILCS 3615/3A. As a transit special district, Pace is a local governmental entity subject to the TIA. *Pace v. Regional Transp. Auth.*, 346 Ill. App. 3d 125, 142 (2d Dist. 2003).

common-law duties that preexisted the TIA. *See id.* (citing *Bubb v. Springfield School Dist.*, 167 Ill. 2d 372, 377-78 (1995)). To evaluate whether a defendant owed a plaintiff a duty, courts are to look to four factors: (1) the reasonable foreseeability of injury; (2) the reasonable likelihood of injury; (3) the magnitude of the burden that guarding against injury places on the defendant; and (4) the consequences of placing that burden on the defendant. *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 18.

Maldonado argues first that Pace owed a general duty to install bus stops only in those locations where it was reasonably safe for fare paying passengers to enter and exit a bus. Noticeably absent from Maldonado's brief is a single citation to the common law standing for such a principle. Absent the identification of a common law duty for common carriers to provide only safe bus stops, Maldonado has no cause of action. Relatedly, Rainey was at no time leading up to her death a Pace passenger. The law confers passenger status on a person *vis-à-vis* a common carrier only if that person is engaged in boarding a train or bus. *Anderson v. Chicago Transit Auth.*, 2019 Il App (1st) 181564, ¶ 29. A person who is merely in the vicinity of a bus stop or train platform is not a passenger to whom a common carrier owes the highest duty of care. *Id.* at ¶¶ 35-36.

Maldonado argues second that it was incumbent on Pace to consider existing municipal infrastructure and overall passenger safety before deciding where to place its bus stop. As to this argument, Maldonado cites to Pace's own publication, *Guidelines for Pace Infrastructure & Facilities.* Yet the reliance on internal guidelines to establish a duty has been soundly rejected. "Where the law does not impose a duty, one will not generally be created by a defendant's rules or internal guidelines. Rather, it is the law which, in the end, must say what is legally required." *Rhodes v. Illinois Cent. Gulf R.R.*, 172 Ill. 2d 213, 238 (1996) (citing cases). Again, Maldonado does not cite to any common law duty requiring common carriers to account for municipal infrastructure in placing a bus stop.

Maldonado's failure to cite to a common law duty in support of his arguments is not surprising given that his allegations cannot meet the four fundamental elements necessary to establish a duty. First, it is not reasonably foreseeable that a person would be injured because a common carrier placed a bus stop in any particular location. A bus stop's location is irrelevant if, as in this case, a truck is an intervening cause by striking a pedestrian in a traffic lane. Second, it is not reasonably likely that a person would be injured simply by placing a bus stop at any particular street; again, an intervening cause is necessary. Third, if Pace were liable for the location of its bus stops, it would be saddled with potential liability for decisions over which Pace has no control, such as traffic planning and street design. Finally, placing such a burden on Pace would undermine well established precedent and deny local public entities a no-duty defense.

In short, Pace owed Rainey no duty for her safety when she crossed East Touhy Avenue at midblock. Absent any duty, Maldonado cannot state a cause of action against Pace. This conclusion makes unnecessary any discussion of Pace's other arguments or Maldonado's responses.

II. Des Plaines' Motion to Dismiss

Des Plaines brings its motion to dismiss pursuant to Code of Civil Procedure section 2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

Des Plaines claims immunity from liability under TIA section 3-102(a). Section 3-102(a) states, in part, 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). In its common law gloss of section 3-102(a), the Supreme Court has written:

> [R]oads are paved, marked and regulated by traffic signs and signals for the benefit of automobiles. Parking lanes are set out according to painted blocks on the pavement, signs or meters on the sidewalk or parkway, or painted markings on the curb. Pedestrian walkways are designated by painted crosswalks by design, and by intersections by custom. These are the indications of intended use. That pedestrians may be permitted to cross the street mid-block does not mean they should have unfettered access to cross the street at whatever time and under whatever circumstances they should so choose. Marked or unmarked crosswalks are intended for the protection of pedestrians crossing streets, and municipalities are charged with liability for those areas. Those areas do not, however, include a highway in mid-block.

Wojdyla v. City of Park Ridge, 148 Ill. 2d 417, 426 (1992) (local public entity immunized from liability because pedestrian was not intended user of street when crossing traffic lanes outside of crosswalk and struck by motor vehicle).

Maldonado's complaint presumes that Rainey was an intended user of East Touhy Avenue. That presumption is without any basis. The Illinois Vehicle Code defines "crosswalk" as:

> (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway, and in the absence of a sidewalk on one side of the highway, that part of the highway included within the extension of the lateral line of the existing sidewalk to the side of the highway without the sidewalk, with such extension forming a right angle to the centerline of the highway;
>
> (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface placed in accordance with the provisions in the Manual adopted by the Department of Transportation as authorized in Section 11-301.

625 ILCS 5/1-113. "[A] piece of property may constitute a 'crosswalk' if it meets the requirements of either, not both, section (a) or section (b)." *Kavales v. City of Berwyn*, 305 Ill. App. 3d 536, 542 (1st Dist. 1999). By its plain language, the definition supplied by subsection (a) applies only to crosswalks located at intersections. *See id.* In contrast, subsection (b) defines a crosswalk at any location as long as it is marked. *Id.*

It is uncontested the portion of East Touhy Avenue where Rainey crossed was not an intersection. That fact eliminates any application of subsection 1-113(a). It is also uncontested the portion of East Touhy Avenue where Rainey crossed was not a marked crosswalk. That fact eliminates any application of subsection 1-113(b). Since Rainey was not crossing at an intersection or in a marked crosswalk at midblock, she could not have been an intended user of East Touhy Avenue when she crossed the street. Section 3-102 immunity, therefore, applies.

Des Plaines also argues that TIA section 3-104 provides immunity from its failure to provide regulatory traffic control devices. As provided,

> Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to initially provide regulatory traffic control devices, stop signs, yield right-of-way signs, speed restriction signs, distinctive roadway markings or any other traffic regulating or warning sign, device or marking, signs overhead lights, traffic separating or restraining devices or barriers.

745 ILCS 10/3-104. Section 3-104 provides absolute immunity. *Ramirez v. Village of River Grove*, 266 Ill. App. 3d 930 933 (1st Dist. 1994). Again, it is uncontested that there was no crosswalk, speed reduction sign, or other marking devices at the location where Rainey crossed East Touhy Avenue. Further, there is no evidence that Des Plaines had at any previous time placed such devices at or near the location. The inexorable conclusion is that section 3-104 applies and immunizes the city from liability. This conclusion is true, even if Des Plaines had prior knowledge of a previous death at the same location. *Sexton v. City of Chicago*, 2012 Il App (1st) 100010, ¶ 70 (citing *West v. Kirkham*, 147 Ill. 2d 1 (1992)).

Maldonado's complaint makes various claims that, in addition to Des Plaines' failure to make any public improvements, Des Plaines was negligent for not requesting IDOT to make public improvements to East Touhy Avenue. On this point, Des Plaines correctly focuses on its lack of duty, not the TIA. Des Plaines points out that Maldonado fails to allege either that IDOT owned and controlled the particular stretch of East Touhy Avenue where the collision occurred, or that Des Plaines owed a common law duty to request IDOT to make public improvements in the area. Such an allegation is essential because local public entities owe no duty to persons who are injured on property not owned by the local public entity. *Grabinski v. Forest Preserve Dist. of Cook*

Cnty., 2020 IL App (1st) 191267, ¶ 20 (forest preserve owed no duty to plaintiff to clean up construction debris on adjacent IDOT roadway). In short, if IDOT owns the stretch of East Touhy Avenue, Des Plaines owed Rainey no duty to request IDOT to make improvements to its roadway. If, on the other hand, Des Plaines owns the street, Des Plaines is immune from liability for the reasons presented above.

Conclusion

For the reasons presented above, it is ordered that:

1. The motion to dismiss count four by Pace is granted;
2. The motion to dismiss count five by Des Plaines is granted;
3. Pace and Des Plaines are dismissed with prejudice, the case continues as to all other defendants; and
4. Pursuant to Illinois Supreme Court Rule 304(a), there is no just reason to delay either the enforcement or appeal of this order.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUL 29 2021

Circuit Court 2075