Illinois Supreme Court holds that Natural or Unnatural Accumulation of Snow is Irrelevant for Public Recreational Property Immunity

In recent years this column has featured articles related to snow and ice removal. As this area of property law is ever evolving, we revisit the most recent analysis of the subject here. In mid-October 2012, on the brink of another dreaded Chicago winter season, the Illinois Supreme Court ruled that publicly-owned recreational facilities have broad immunity from liability to individuals who are injured by falls on snow or ice. Moore v. Chicago Park Dist., 2011 IL App (1st) 112788. This decision overruled a June 2011 First District decision which held that an “unnatural” accumulation of snow and ice in a park district parking lot was not a “condition of public property” and, therefore, the park district was not immune from liability pursuant to Section 3-106 of the Local Government and Governmental Employees Tort Immunity Act (“Tort Immunity Act”). See 745 ILCS 10/3-106. This article will give a brief overview of the natural accumulation rule, as well as discuss the interplay between the natural accumulation rule and tort immunity for public recreational facilities in light of the recent appellate and supreme court holdings.

The “natural accumulation” rule and public property immunity

Under the natural accumulation rule, a public or private landowner has no duty to remove “natural” accumulations of ice, snow, or water from its property. Krywin v. Chicago Transit Auth., 238 Ill. 2d 215, 227 (2010). However, when a landowner elects to undertake snow and ice removal, the landowner has a duty to exercise ordinary care when doing so. Hornacek v. 5th Ave. Prop. Mgmt., 2011 IL App (1st) 103502. The General Assembly codified this rule with respect to municipalities in section 3-105 of the Tort Immunity Act. Section 3-105 grants public entities absolute immunity from liability for injuries caused by natural accumulations of snow and ice, but only conditional immunity when the injury is caused by an unnatural accumulation. See Ziencina v. County of Cook, 188 Ill. 2d 1, 13-14 (1999). Therefore, if a local public entity undertakes to remove snow, it must exercise ordinary care. Ziencina, 188 Ill. 2d at 9-10; 745 ILCS 10/3-105(c).

Further, Section 3-106 of the Act provides that “[n]either 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 … unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.” (emphasis added). 745 ILCS 10/3-106. The legislature, by carving out recreational-based public entities from liability in this section, promoted the development and maintenance of parks, playgrounds, and other similar recreational property and prevented the use of public funds intended

To determine what constitutes a “condition of public property” immunity for purposes of section 3-106, courts have held that public entities are immunized from liability where the property itself is unsafe, but are not immunized for unsafe activities conducted upon otherwise safe property. See McCuen v. Peoria Park District, 163 Ill. 2d 125, 129 (1994); Nelson v. Northeast Illinois Regional Commuter R.R. Corp., 364 Ill. App. 3d 181 (5th Dist. 2006). In other words, activities conducted on public property “intended or permitted to be used for recreational purposes” are not considered “conditions of” the property. 745 ILCS 10/3-106.

Silvia Lee Moore v. Chicago Park District

Applying the above principles, we turn to the facts of the recent Moore case. Sylvia Lee Moore fell and fractured her femur in the Fernwood Park Fieldhouse’s parking lot as she was leaving a senior water aerobics class. Moore, 2011 IL 112788, ¶ 3. The Chicago Park District owned and operated the property, and after snowfall of approximately 3 inches on the date in question, Park District employees plowed the parking lot, and shoveled and salted the sidewalk leading to the main entrance. Id. Moore entered the facility without incident, however, she exited through another door and the route to the car in which she was traveling was blocked by three cars parked in designated spots. Id. Moore chose to walk between two of the cars but slipped when she attempted to step over a pile of snow at the edge of the parking lot that had collected there due to plowing. Id. She later died as a result of complications from the surgery to repair her cracked femur. Id.

The special administrator of Moore’s estate filed suit against the Park District claiming that it had “negligently and carelessly shoveled and plowed snow into mounds in the area of the parking lot and walkway including the pedestrian ramp creating an unnatural condition to walk upon or step over.” Id. ¶ 4. The Park District moved for summary judgment arguing it was immune from plaintiff’s claims under section 3-106 of Tort Immunity Act. Id. The circuit court denied defendant’s motion, citing Stein v. Chicago Park District, 323 Ill. App. 3d 574 (1st Dist. 2001), on the basis that Section 3-106 immunity was not applicable because snow is “not affixed to the property in a way that it would become property itself.” Id.

Appellate Court rules that “unnatural accumulation” of snow does not constitute a “condition” of the property

The circuit court certified the following question for interlocutory appeal pursuant to Supreme Court Rule 308: “Does an unnatural accumulation of snow and ice constitute the ‘existence of a condition of any public property’ as this expression is used in Section 3-106 of the Tort Immunity Act?” Id. ¶ 1. In determining what constitutes a “condition” of the public property for immunity purposes, like the circuit court, the Moore appellate court looked to Stein v. Chicago Park District for direction.

In that case, the plaintiff tripped over a watering hose placed on a sidewalk by a Chicago Park District employee. The Stein court defined a “condition” as “part of the property’s ‘mode or state of being,’ i.e., part of the property itself.” (internal citations omitted). Stein, 323 Ill. App. 3d at 577. Relying in part on this definition, the Moore appellate court reasoned that because the Park District employees had moved the snow into a dangerous position, the parking lot and sidewalk themselves were not dangerous, thus the snow could not constitute a “condition” for section 3-106 immunity purposes. Moore, 2011 IL 103325, ¶ 13; rev’d, 2012 IL App (1st) 112788.
The Moore appellate court therefore concluded that the activity of the Park District employees moving the snow and ice onto the parking lot was an unsafe activity conducted upon otherwise safe property which resulted in an “unnatural accumulation,” and answered the certified question in the negative. However, writing for the dissent, Justice Connors noted that in contrast to section 3-105 of the Tort Immunity Act, “there is no provision in section 3-106 that makes a public entity subject to the due-care requirements of 3-102” and the sole exception to the immunity conferred by Section 3-106 is for willful and wanton conduct. Moore, 2011 IL 103325, ¶ 24.

Supreme Court reverses—“Unnatural” or “natural” accumulation of snow is irrelevant to question of immunity under the Act

The Illinois Supreme Court granted leave to appeal and reversed the appellate court. The supreme court began by considering whether it mattered that the snow was an “unnatural” accumulation — meaning that the pile of snow on which Moore slipped existed as a result of the Park District’s plowing, as opposed to having fallen there naturally. Moore, 2012 IL 112788, ¶ 9. The court agreed with Justice Conners’ dissenting opinion, finding that while section 3-105 of the Tort Immunity Act made an express distinction between natural accumulations (absolute immunity) and unnatural ones (qualified immunity); because section 3-106 made no such distinction, the natural/unnatural issue was irrelevant to the scope of immunity. Id. ¶ 12.

The supreme court then turned to the question of whether snow and ice, regardless of a natural or unnatural accumulation, constitutes a “condition” of the public property. The court found McGuen v. Peoria Park District to be controlling and that the relevant inquiry in determining whether something is a “condition” is whether the injury was caused by the property itself or by an activity conducted on the property. McGuen, 163 Ill. 2d at 129; Moore, 2012 112788, ¶ 10. The court concluded that “the existence of snow and ice was not an activity conducted on defendant’s property, but rather a condition of the property.” Moore, 2012 IL 112788, ¶ 16.

Distinguishing McGuen, where the plaintiff was injured by the defendant’s employee’s negligent handling of a mule-drawn hayrack ride, the Moore court found that immunity should apply where it was not the actions of the Park District employee in using the snow removal equipment, but the unsafe condition of the property itself that caused Moore’s injury. Id. The Moore court further disagreed with the appellate court’s reliance on the Stein definition of “condition” and emphasis on “affixation” to the property, finding that a “condition” of property may be movable or temporary in nature. Id. ¶¶ 19-21. In doing so, the Moore court overruled Stein to the extent it contradicted its opinion. Id. ¶ 21. Chief Justice Kilbride, joined by Justice Freeman, dissented, arguing that Moore’s injury was caused by the allegedly negligent snow removal activity resulting in the unnatural accumulation of snow and ice, not by the property itself, and would have affirmed the appellate court decision. Id. ¶¶ 37-38.

Conclusion

In light of the Illinois Supreme Court’s recent ruling, public entities can expect to enjoy broad immunity from liability for even negligent snow and ice removal on recreational property. So long as the snow removal activities do not constitute “willful and wanton” activity, whether the accumulation of snow resulting in injury is “natural” or “unnatural” is irrelevant. While seemingly a harsh blow to the unlucky plaintiff who happens to be seriously injured on snow or ice on publicly-owned recreational property, Illinois courts appear committed to protecting and encouraging the maintenance and development of public recreational areas. Now, advice to clients as to how to shovel is dependent on both how the maneuver is completed and who does the shoveling. We are certain there will be “more” to come on this subject.
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