IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

JANE ANN M. HONTZ and AMMON D. HONTZ, Plaintiffs	:	
vs.	:	**No. 22-2524**
STANLEY MCFARLAND; FAILTE, Inc., trading and doing Business as Molly Maguire's Irish Pub; and BOROUGH OF JIM THORPE, Defendants	:	

Armin Feldman, Esquire	Counsel for Plaintiffs
Paul S. Gambone, Esquire	Counsel for Stanley McFarland
Steven Cherry, Esquire	Counsel for Failte, Inc. and Molly Maguires Irish Pub
Patick Boland, Esquire	Counsel for Jim Thorpe Borough

MEMORANDUM OPINION

Matika, J. - December 5 , 2025

Local agencies, such as borough and townships, enjoy immunity from liability for damages to persons caused by acts of that agency or its employees pursuant to 42 Pa. C.S.A. §8541 of the Political Subdivision Tort Claims Act. There are exceptions, however, to that governmental immunity as espoused in 42 Pa. C.S.A. §8542(b). In this case, the Defendant, Borough of Jim Thorpe (hereinafter "Borough" or "Jim Thorpe") has filed a Motion for Summary Judgment claiming that the facts of this case and the law applicable thereto leads to the conclusion that the Borough is immune from liability

and damages to the Plaintiffs, Jane Ann M. Hontz and Ammon D. Hontz, her husband (hereinafter "Jane" or "Ammon" singularly or "The Hontz'" collectively) by virtue of §8541 and that none of the exceptions, specifically §8542(b)(3)(iv) nor (4) apply to impose such liability. For the reasons stated in this Opinion, Jim Thorpe's Motion is **DENIED.**

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs, the Hontz' filed a civil complaint against the Borough, Stanley McFarland (hereinafter "McFarland") and Failte, Inc. t/d/b/a Molly Maguire's Irish Pub (hereinafter "Failte") as the result of injuries sustained by Jane on May 5, 2022. Two days prior on May 3, 2022, McFarland lost control of his vehicle which than collided with a metal pole which had affixed to it, a sign with information directing individuals as to what they needed to do regarding paying for parking in the Borough at designated kiosks. This car then proceeded to strike some outdoor dining furniture in the front of Failte's restaurant. In the process of McFarland's car jumping the curb and crossing this sidewalk fronting the restaurant, the car managed to strike the metal pole in such a way that the largest part "broke away" from the base.[1]

[1] According to Borough employee, Jeff Thomas, these signs, cemented into the concrete sidewalk are designed in such a way that in the event they are impacted in situations, for example, when a car strikes them, the largest part of the metal pole dislodges from the base and falls over as opposed to bending in place.

As a result, what remained protruding out of the ground by 5-6 inches was the smaller portion of the metal pole still in the concrete sidewalk.

After this incident, representatives of the Borough placed a traffic cone over what remained of this sign as a precaution because what remained, according to the Borough employee was a tripping hazard. On that date, the Borough employee did not have time to remove what remained of the sign in that concrete. Unfortunately, this cone was removed and another put in its place however, on the date of Jane's trip and fall, no cone was present.

On May 5, 2022, the Hontz' were having dinner and drinks at Failte's establishment. Upon leaving, they walked on the sidewalk fronting the restaurant when Jane tripped on the protruding base causing her to fall, sustaining the injuries she claimed in her complaint.

After the pleadings closed in this case and upon completing discovery, Jim Thorpe filed the instant Motion for Summary Judgment claiming they were immune from liability. All parties briefed and argued this issue and the matter is now ripe for disposition by the Court.

LEGAL DISCUSSION

Pursuant to 42 Pa. C.S.A. §8541, "except as otherwise noted in this subchapter, no local agency shall be liable for any damages

on account of an injury to a person or property caused by an act of the local agency or an employee thereof or any other person." There are exceptions to this governmental immunity as set forth in 42 Pa. C.S.A. §8542.[2] In the instant case, while the Borough believes it is immune from liability, it also argues that certain of the exceptions related to sidewalks and traffic controls, which may otherwise be applicable are not. For reasons apparent herein, this Court will only address the sidewalk exception and whether that is applicable to still allow this case to go forward against Jim Thorpe.

In addition to the requirements of subsection (a), in order for the sidewalk exception to apply and impose liability on the Borough, the injury must occur as a result of:

> "A dangerous condition of sidewalks within the rights-of-way of streets owned by the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that

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[2] Subsection (a) of this statute reads as follows:

Liability imposed - A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

(1)The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity); and

(2)The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). As used in this paragraph, "negligent acts" shall not include acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct.

> the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition." §8542(b)(7).

The only disputed issue is whether the dangerous condition, i.e., the 5-6 inches of the metal pole sticking out of the concrete sidewalk, is "of" the sidewalk. In determining if this exception is applicable, it is to be narrowly interpreted. *Walsh v. City of Philadelphia*, 585 A.2d 448 (Pa. 1991).

Jim Thorpe relies on the case of *Finn v. City of Philadelphia*, 664 A.3d 1342 (Pa. 1995), to make its argument that the sidewalk exception does not apply. In *Finn*, the Plaintiff is alleged to have slipped and fallen on grease that was on a city sidewalk. The court held that the dangerous condition, i.e. the grease, "did not derive, originate from or have as its source the sidewalk" *Id.* at 1346. Courts have been consistent in finding that the sidewalk exception does not apply for dangerous conditions <u>on</u> the sidewalk. (*See Amacher v. Penrose*, 499 A.2d 716 (1985), where the dangerous condition was a wire falling onto the sidewalk; *See Ziccardi v. School District of Philadelphia*, 498 A.2d 452 (1985), where a criminal assault occurred on the sidewalk; *See Deluca v. School District of Philadelphia*, 654 A.2d 29 (Pa Commw. Ct. 1994, where the dangerous condition was milk, seeping out of a trash bag onto the sidewalk, that froze on the sidewalk). All of these cases

clearly show the dangerous condition being one "on" the sidewalk as opposed to "of" the sidewalk.

In *Gray v. Logue*, 654 A.2d 109 (1995), the court addressed the situation where a pipe protruded out of the sidewalk causing the Plaintiff to trip, fall and injure himself. In that case, the court held that the borough had immunity and the sidewalk exception did not apply, but it was as a result of the facts that the sidewalk was within the right of way of the street owned by the Commonwealth, Department of Transportation, and not "owned" by the borough. In addressing the real estate exceptions, Gray argued that the pipe constituted real property because the pipe was a fixture installed in the sidewalk. The court disagreed and noted that "the pipe cannot be a fixture[3] without being part of the sidewalk." *Gray* at 113. (emphasis ours).

Wise v. Huntington County Housing Development Corporation, 249 A.3d 506 (2021) is further instructive on the issue of "of the sidewalk." In *Wise*, the court dealt with the issue of sovereign immunity for a dangerous condition involving the real estate exception under 42 Pa. C.S.A. §8522(b)(4).[4] In that case, the Plaintiff tripped and fell while walking on a sidewalk caused as

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[3] At the argument, counsel for the borough conceded that the part of the pole sticking out of the concrete sidewalk was a "fixture."

[4] Under this exception entitled, "Commonwealth Real Estate, Highways & Sidewalks, liability can still lie where a dangerous condition of Commonwealth . . . sidewalk" exists.

a result of "insufficient outdoor lighting of the sidewalk area, purportedly due to the location of a pole light and a tree obstructing the light provided." at 509. The court found that to be "of" the sidewalk, "the dangerous condition" must derive, originate from or have its source, the Commonwealth realty." *Id.* at 517.

> "Indeed, a dangerous condition resulting from "a defect in the property or in its construction, maintenance, repair or design" will preclude application of immunity. Further, the dangerous condition must be an artificial condition or defect of the land itself, as opposed to the absence of such a condition, and that artificial condition or defect must be the cause, or a concurrent cause, of the injury.
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> Applying the above legal principles we hold that the claim at issue is sufficient to invoke the real estate exception to sovereign immunity. Specifically, *Wise* has alleged the existence of a dangerous condition," i.e., insufficient outdoor lighting. In order to meet the exception, that "dangerous condition" of insufficient outdoor lighting "must derive, originate from or have as its source" the Commonwealth real estate. Here, in claiming that the insufficient outdoor lighting stems from the existence and position of the pole light and tree in relation to the sidewalk area of HACH's property, *Wise* has met this requirement. In other words, she has identified a dangerous condition that results from a "defect in the property or in its construction, maintenance, repair, or design." *Wise* further alleges that the dangerous condition of inadequate lighting caused her injuries. Thus, HACH cannot raise immunity as a matter of law to bar her claim.
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> In reaching this conclusion, we are careful to emphasize the precise nature of *Wise's* claim. It is not simply an assertion of an "absence of a condition," like the "absence of lighting" in *Snyder* and "absence of a guardrail" in *Dean*, which were determined to fall outside of the real estate exception. Rather, Wise

> alleges that insufficient artificial lighting existed on the Commonwealth realty because of the arrangement of the sidewalk, pole light, and tree, which are part of the real property. Stated differently, *Wise* alleges the presence of inadequate lighting on the Commonwealth realty, not the absence of lighting altogether. In this respect, *Wise's* claim is akin to the claim addressed in *Cagey*, which was based upon the presence of a defective guardrail as part of the Commonwealth realty, rather than the absence of one, and determined to fit within the real estate exception. *See Cagey*, 179 A.3d at 467 (holding that "[w]hen PennDOT installs a guardrail, sovereign immunity is waived if the agency's negligent installation and design creates a dangerous condition"). We likewise hold that, when an agency installs lighting as part of its real estate, "sovereign immunity is waived if the agency's negligent installation and design creates a dangerous condition." Id. at 517-518.

Applying this to the case *subjudice*, we have the Borough affixing signage into a concrete sidewalk. This in and of itself is not a dangerous condition. When McFarland struck the sign, thereafter resulting in only the 5-6 inch base remaining, that became "an artificial condition or defect of the land itself." The defect in the property occurred after the sign was struck and, based on the Borough's inaction in properly maintaining or, removing the base.

To summarize, the Borough may not raise the defense of governmental immunity where the dangerous condition is "of" the sidewalk, as we have determined here, if that defect was caused by the Borough's failure, after due notice, to properly maintain or

repair that defect, that being, the protruding 5-6 inches of the remnants of the sign.

CONCLUSION

Based upon the foregoing, the Motion for Summary Judgment filed by the Borough of Jim Thorpe is **DENIED.**

BY THE COURT:

Joseph J. Matika, J.