

LONNIE CLARK, individually
and as parent, natural
guardian, and administrator
of the estate of CAITYN
WILLIAM CLARK,
Plaintiffs

IN THE COURT OF COMMON
PLEAS FOR THE 26TH JUDICIAL
DISTRICT, COLUMBIA COUNTY
BRANCH, PENNSYLVANIA
CIVIL ACTION - LAW

vs

CASE NO: 1266-2006

STEPHANIE STEINER and
JACKSON TOWNSHIP, Columbia
county, Pennsylvania, a
Body Politic,
Defendants

APPEARANCES:

MICHAEL B. KASPSZYK, ESQUIRE, Attorney for the Plaintiffs
GARY L. WEBER, ESQUIRE, Attorney for the Defendant
Stephanie Steiner
PATRICK J. MURPHY, ESQUIRE, Attorney for the Defendant
Jackson Township

November 4, 2010. JAMES, J.

OPINION

This matter is before the court to consider defendant Jackson Township's motion for summary judgment regarding Jackson Township's governmental immunity defense without exception. The case arises out of an automobile accident. On September 14, 2004, defendant Stephanie Steiner was operating her vehicle on Sones Hollow Road, a gravel and dirt township road, in Jackson Township, Columbia County, Pennsylvania. Her seven (7) year old son Caityn was a passenger. Her son died as a result of the accident.

Plaintiff, Caityn's father and estate administrator,
brought suit against Stephanie Steiner and Jackson
Township.

SUMMARY JUDGMENT STANDARD

The standard for determining whether summary judgment
should be granted is set forth in Pa.R.C.P. 1035.2:

After the relevant pleadings are closed, but
within such time as not to unreasonably delay
trial, any party may move for summary judgment in
whole or in part as a matter of law

- (1) whenever there is no genuine issue of
any material fact as to a necessary
element of the cause of action or
defense which could be established by
additional discovery or expert report,
or
- (2) if, after the completion of discovery
relevant to the motion, including the
production of expert reports, an
adverse party who will bear the burden
of proof at trial has failed to
produce evidence of facts essential to
the cause of action or defense which
in a jury trial would require the
issues to be submitted to a jury.

"The essence of the revision set forth in new Rule
1035.2 is that the motion for summary judgment encompasses
two concepts: (1) the absence of a dispute as to any
material fact and (2) the absence of evidence sufficient to
permit a jury to find a fact essential to the cause of
action or defense. The former rule was unclear as to

whether it encompassed the type of motion which is based upon a record which is insufficient to sustain a prima facie case. Rule 1035.2(2) is explicit in authorizing such a motion." Pa.R.C.P. 1035.2, Explanatory Comment-1996.

In determining the merit of a motion for summary judgment the court must examine the record in the light most favorable to the non-moving party. Ward v. Rice, 828 A.2d 1118, 1120 (Pa.Super. 2003). All doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party on motion for summary judgment. Id.

DISCUSSION

Defendant Township asserts that it is immune from suit since governmental immunity shields it from liability. "Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa.C.S.A. sec. 8541.

Plaintiff argues that the following statutory exception set forth in 42 Pa.C.S.A. sec. 8541(b)(6)(i) applies to these facts: A governmental unit is liable for "[a] dangerous condition 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 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."

Here are the undisputed facts. The accident happened at 3:30 p.m. on a clear day. Defendant Steiner was operating her vehicle with a BAC of approximately .129 %. On a curve in the road, she lost control of her vehicle and flipped it. She hit some gravel, "gathered gravel." The road was a gravel/dirt road. At the time of the accident, the road was dry. The road had no speed limit signs, nor was it otherwise signed, e.g., for curves. The road is narrow, 12-16 feet wide. Jackson Township has approximately 35-36 miles of unpaved roads and approximately 11 miles of paved roads. Jackson Township maintains the road.

Each of the parties submitted expert engineering reports. Plaintiff's expert is relevant to this summary judgment action. Plaintiff's expert opines as follows:

In summary, and to avoid ambiguity, it is my professional opinion to a reasonable degree of engineering certainty that Sones Hollow Road in

the vicinity of the subject accident was maintained in a dangerous and palpably unreasonable condition that was a substantial contributing cause of the subject accident and resulting unfortunate death of Caityn Clark. Based upon the my (sic) analysis and the information provided to date, Stephanie Steiner was operating her vehicle within the legal speed limit when she lost control of her vehicle, causing it to leave the dirt/gravel roadway surface, impact a dirt embankment and roll over, coming to rest on the travel portion of the cartway, on its roof. In my opinion, the legal speed limit for the subject roadway in the accident vicinity was too high for the roadway geometry, character and surroundings, creating a dangerous and palpably unreasonable condition that was causally related to the happening of the subject accident and unfortunate death of Caityn Clark. It is further part of my opinion that the dangerous and palpably unreasonable condition of the roadway and excessively high speed limit that existed on the date of the subject accident should have been apparent to the entity charged with maintaining the subject roadway and should have been corrected prior to the happening of this unfortunate accident. (Emphasis supplied)

The gravamen of Plaintiff's expert's opinion is that the 55 mile per hour speed limit was too fast for a gravel/dirt township country road. Thus, the issue is whether, because this narrow, dirt, curvy country township road has no speed limit posted (and thus has a 55 mile per hour speed limit)¹, there exists a "dangerous condition of streets" as defined by the statute and case law.

Plaintiff's claim is that the condition of the road or

¹ See 75 Pa.C.S.A. sec. 3362.

street itself is not dangerous, but only when coupled with the lack of a posted speed limit. However, that analysis fails to consider another applicable and basic rule of the road, i.e., that a driver must drive at a safe speed taking into account driving conditions. 75 Pa.C.S.A. sec. 3361 directs the following:

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

When a road or street is posted for 55 miles per hour and is covered with snow or ice, it is likely not prudent or reasonable to drive 55 miles per hour. Likewise, when a dirt/gravel road is narrow, curvy, and winding, the law directs that drivers operate their vehicles at a speed no "greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing."

In the case of unpaved narrow township roads, driving is simply more appropriately governed by 75 Pa.C.S.A. sec. 3361 (Driving vehicle at safe speed), rather than 75 Pa.C.S.A. sec. 3361 (maximum speed limits) which allows 55 mile per hour driving when not posted. Frankly, solely assuming that the speed limit is 55 miles per hour on these roads is nonsensical. These are clearly roads that are governed by the discretionary and common sense notions of section 3361. The dirt/gravel road was not itself inherently dangerous. The law directs that drivers drive at safe speeds on such roads. Therefore, under the undisputed facts, there was no "dangerous condition" for which Jackson Township would be liable. Governmental immunity applies. Plaintiff's claims against Jackson Township must be dismissed.

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ORDER

AND NOW, this 4th day of November 2010,
defendant Jackson Township's Motion for Summary Judgment is
GRANTED. Judgment is entered in favor of defendant Jackson
Township and against plaintiff.

BY THE COURT

HONORABLE THOMAS A. JAMES, JR., J.