NO. UWY-CV-20-6055455-S

CAROL CORRIDOR	:	SUPERIOR COURT
V.	:	JUDICIAL DISTRICT OF WATERBURY
WATERBURY BOARD OF ED., ET AL	:	MAY 7, 2023

MEMORANDUM OF DECISION

The plaintiff, Carol Corridor, brings this action in negligence against the defendants, the Waterbury Board of Education, the City of Waterbury, and the Waterbury Registrars of Voters, claiming they were negligent when she fell and injured herself inside the B. W. Tinker Elementary School, located in Waterbury, where she went to vote on August 14, 2018. The defendants deny the allegations of her complaint and assert a special defense that, under General Statutes § 52-557n, all of the defendants were governmental employees and therefore immune from claims of negligence. The plaintiff has asserted that if in fact they were immune they are exempt under the "identifiable victim" exception.

The case was tried on March 21, 2024, before the undersigned. The plaintiff testified that on August [illegible] 2018 she went to the B. W. Tinker Elementary School to vote in a primary

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election. She arrived, checked in, went to a booth, filled out her ballot and when she was walking to register her vote, she slipped and fell on what she described as a puddle of water and injured herself. She was helped up, felt embarrassed and felt some pain in her right knee and leg, yet she nevertheless was able to walk, and she left the school and returned home. Although she continued to have pain in her knee and leg, she did not seek medical attention for about four weeks from the date of the accident. She saw an orthopedic specialist who took X-rays and an MRI and found that she injured her right knee and sustained a fracture of the tibia of the right leg. She was treated for a period of time and incurred medical bills in the amount of $4,000. The plaintiff submitted all of her medical reports including reports of the treating physicians without objection, which clearly established her permanent injury, the pain and suffering she had endured to the date of trial, what she would in all probability endure for the remainder of her life, evidence of present and future disabilities, and how this all has affected her life and will continue to affect her life. The plaintiff then rested her case.

At this point the defendant moved for a judgment of dismissal on the basis that the plaintiff's claims are barred by governmental immunity pursuant to section 52-557n. The court did not act on this motion so that both parties would have the opportunity to address it in briefs at the conclusion of the trial. The court then allowed the defendant to put on his defense.

The court will first address the defendant's claim that the plaintiff's claim is barred by the governmental immunity statute, § 52-557n. That statute provides that municipalities and their employees are not liable in tort if the acts complained of were discretionary rather than ministerial. Or put in another way, municipal employees are immune from all liability except for their failure to perform ministerial duties. See *Silberstein* v. *54 Hillcrest Park Associates, LLC*, 135 Conn. App. 262, 270-71, 41 A.3d 1147 (2012) ("As our Supreme Court has explained, [m]unicipal officials are immunized from liability for negligence arising out of their discretionary acts . . . . In contrast, municipal officers are not immune from liability for negligence arising out of their ministerial acts."

[Internal quotation marks omitted.]). The plaintiff argues that the acts complained of were ministerial and that if they were discretionary, they come within the "identifiable victim" exception.

There is no question that the acts complained of were not ministerial but discretionary. "A ministerial act is one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment [or discretion] upon the propriety of the act being done. . . . In contrast, when an official has a general duty to perform a certain act, but there is no city charter provision, ordinance, regulation, rule, policy, or any other directive [requiring the government official to act in a] prescribed manner, the duty is deemed discretionary." (Internal quotation marks omitted.) *Cole* v. *New Haven*, 337 Conn. 326, 338, 253 A.3d 476 (2020). It is the plaintiff's burden to "point to some statute, city charter provision, ordinance, regulation, rule, policy, or other directive that, by its clear language, compels a municipal employee to act in a prescribed manner, without the exercise of

judgment or discretion." (Internal quotation marks omitted.) Id., 339. The plaintiff claims that at trial, testimony established that "the preeminent policy of the Waterbury School system was to [ensure] the schools were as safe as possible"; Plaintiff's Post Trial Brief, p. 5; but such a reference to a vague policy to ensure that schools are kept as safe as possible is not sufficient to establish that the defendants' agents were subject to a non-discretionary duty regarding how the specific condition of water on the school floor should be handled. See *Strycharz* v. *Cady*, 323 Conn. 548, 566-67, 148 A.3d 1011 (2016) (testimony that did not identify specific directive was insufficient to establish existence of ministerial duty); *Bonington* v. *Westport*, 297 Conn. 297, 308, 999 A.2d 700 (2010) (recognizing that ministerial duties "mandate a particular response to *specific conditions*" [emphasis added]). Clearly, because the plaintiff has failed to satisfy her burden of pointing to a directive that mandated a particular response to the specific condition of water on the school floor, the defendants were sued for their failure to perform the discretionary duty of keeping the floors free of water.

The plaintiff next argues that even if the defendants were performing a discretionary act, because the plaintiff was an "identifiable victim" the defendants are not immune under § 52-577n. This exception provides that under certain circumstances, the immunity provided by § 52-577n would not be applicable and a public employee may be held liable when it is apparent that his or her failure to act "would be likely to subject an identifiable person to imminent harm . . . ." (Internal quotation marks omitted.) *Doe* v. *New Haven*, 214 Conn. App. 553, 579-80, 281 A.3d 480 (2022). Although our Supreme Court recognized that this exception applied to a municipality that failed to keep its school premise free of ice, its holding was based on the finding that the injured schoolchild was one of a class of foreseeable victims to whom the superintendent owed a duty of protection that required special consideration when dangerous conditions were present. *Burns* v. *Board of Education of Stamford*, 228 Conn. 640, 638 A.2d 1 (1994), overruled on other grounds by *Haynes* v. *Middletown*, 314 Conn. 303, 101 A.3d 249 (2014).

The special circumstances existing in the *Burns* case do not exist in this case. The plaintiff, unlike the schoolchild in *Burns*, was not compelled to be at the school when she was injured and, therefore, she could not have been considered a member of a class of foreseeable victims that the defendants would have had a duty to protect. See *Gonzalez* v. *New Britain*, 216 Conn. App. 479, 487, 285 A.3d 436 (2022) ("whether the plaintiff was compelled to be at the location where the injury occurred remains a paramount consideration in determining whether the plaintiff was an identifiable person or member of a foreseeable class of victims" [internal quotation marks omitted]).

In addition, the plaintiff failed to provide evidence that the harm she suffered was imminent as per the four pronged test set forth by our Supreme Court in *Haynes* v. *Middletown*, supra, 314 Conn. 303,[1] which is required to demonstrate that the

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[1] "As we view *Haynes*, in order to qualify under the imminent harm exception, a plaintiff must satisfy a four-pronged test. First, the dangerous condition alleged by the plaintiff must be apparent to the municipal defendant. . . . We interpret this to mean that the dangerous condition must not be latent or otherwise

identifiable victim exception applies. There was no evidence presented as to the precise location where the plaintiff fell. Nor was there any credible evidence as to the size of the puddle she claims she fell in. Was it large, small or just a wet spot? There was no evidence presented that could be the basis for the court to determine that the condition that the plaintiff alleges existed was apparent to the defendant or its agents. There was no evidence presented regarding the location or nature of the water on the ground where she fell that could allow the court to determine that it was an apparent condition to the defendant's agents. Likewise, no evidence was presented demonstrating the existence of water on the ground where she fell created such a

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undiscoverable by a reasonably objective person in the position and with the knowledge of the defendant. Second, the alleged dangerous condition must be likely to have caused the harm suffered by the plaintiff. A dangerous condition that is unrelated to the cause of the harm is insufficient to satisfy the *Haynes* test. Third, the likelihood of the harm must be sufficient to place upon the municipal defendant a clear and unequivocal duty . . . to alleviate the dangerous condition. . . . Finally, the probability that harm will occur must be so high as to require the defendant to act *immediately* to prevent the harm." (Citations omitted; emphasis in original; footnote omitted; internal quotation marks omitted.) *Williams* v. *Housing Authority of Bridgeport*, 159 Conn. App. 679, 705-06, 124 A.3d 537 (2015), aff'd, 327 Conn. 338, 174 A.3d 137 (2017).

high probability of harm that it placed a clear and unequivocal duty on the defendant's agents to act immediately. Consequently, the plaintiff has failed to satisfy at least two prongs of the *Haynes* test, and "[a]ll four of these prongs must be met" in order to demonstrate an imminent harm. *Williams* v. *Housing Authority of Bridgeport*, 159 Conn. App. 679, 706, 124 A.3d 537 (2015), aff'd, 327 Conn. 338, 174 A.3d 137 (2017).

Given the lack of evidence that the plaintiff was compelled to be at the location where she was injured, or that the harm suffered was imminent under *Haynes*, she has failed to establish that she was an identifiable person who was subjected to an imminent harm due to the defendant's failure to act and is therefore unable to take advantage of this exception.

For all of the reasons advanced above, the court will grant the defendants' motion for judgment and dismiss this matter.

Accordingly, judgment will enter on behalf of the defendants, the Waterbury Board of Education, the City of Waterbury and the Waterbury Registrars of Voters.

______________________, JTR
PELLEGRINO