

ORIGINAL

IN THE COURT OF COMMON PLEAS
OF LEBANON COUNTY, PENNSYLVANIA

ENTERED & FILED
PROTHONOTARY OFFICE
LEBANON, PA

CIVIL DIVISION

2025 JAN 24 A 9:39

ZIAIRE LEGER,

Plaintiff,

v.

Docket No.: 2022-0-0231


GREGORY L. MARTIN, ZIMMERMAN
MULCH PRODUCTS, LCC, ANDY
ZIMMERMAN a/k/a ANDREW
ZIMMERMAN and BETHEL
TOWNSHIP,

Defendants.

ORDER OF COURT

AND NOW, this 24th day of January 2025, after careful consideration of the record, Defendant, Bethel Township's, Motion for Summary Judgment is GRANTED.

BY THE COURT:


CHARLES T. JONES, JR.

cc: John C. Porter, Esquire // 1860 Charter Lane, Suite 201, Lancaster, PA 17601 — Mailed
Whitney S. Graham, Esquire // The Commons at Valley Forge, Suite 7, P.O. Box 987,
Valley Forge, PA 19482 — Mailed

Pursuant to Pa. R. Civil P. 236
All parties are hereby notified
this date: 01/21/2025 SR
Prothonotary, Lebanon PA

**IN THE COURT OF COMMON PLEAS
OF LEBANON COUNTY, PENNSYLVANIA**

ENTERED & FILED
PROTHONOTARY OFFICE
LEBANON, PA

2025 JAN 24 A 9:40

CIVIL DIVISION

ZIAIRE LEGER,

Plaintiff,

v.

Docket No.: 2022-0-0231

GREGORY L. MARTIN, ZIMMERMAN

MULCH PRODUCTS, LCC, ANDY

ZIMMERMAN a/k/a ANDREW

ZIMMERMAN and BETHEL

TOWNSHIP,

Defendants.

APPEARANCES:

John C. Porter, Esquire

For Defendant, Bethel Township

Whitney S. Graham, Esquire

For Plaintiff

OPINION BY JONES, JR., J.:

Before this Court is the Motion for Summary Judgment filed by Defendant, Bethel Township (herein referred to as "Township").

FACTUAL AND PROCEDURAL HISTORY

The relevant factual and procedural history is as follows. This case involves a motor vehicle collision which occurred on December 1, 2020, at the intersection of Shirksville Road and Pennsylvania Route 343 in Lebanon County, Pennsylvania. Ziaire Leger ("Plaintiff") was a passenger in a car driven by Cynthia Nguyen traveling westbound on Shirksville Road and was attempting to turn left in the intersection on SR 343. A stop sign controlled the traffic in the lane of travel in which the vehicle driven by Nguyen was traveling. Nguyen failed to stop at the stop

sign and pulled out into the subject intersection, where her vehicle was struck by a Zimmerman Mulch Products tractor trailer operated by Defendant Gregory L. Martin. The tractor trailer driven by Defendant Martin was traveling North on PA-Route 343. Defendant Martin's lane of travel was not controlled by a traffic control sign and he had the right-of-way traveling northbound. As a result of the accident, Plaintiff suffered severe injuries.

On October 30, 2023, Defendants, Gregory L. Martin, Zimmerman Mulch Products, LLC, and Andrew Zimmerman (collectively "Business Defendants") filed an Answer to the Second Amended Complaint and New Matter. On November 13, 2023, Plaintiff filed a response to the New Matter from Business Defendants. After multiple deadline extensions, the Township filed a Motion for Summary Judgment and Brief in Support on August 26, 2024. Also on August 26, 2024, Business Defendants filed a Motion for Summary Judgment and in the alternative, Motion for Partial Summary Judgment to Dismiss Plaintiff's Claim for Punitive Damages and a Brief in support.

On September 23, 2024, Plaintiff filed separate Responses to both Defendants' Motions. On October 17, 2024, Plaintiff filed Briefs in Support of the Responses to both Motions for Summary Judgment. On October 24, 2024, the Township filed a Reply to Plaintiff's Response to its Motion for Summary Judgment. On November 1, 2024, Business Defendants filed a Reply Brief to Plaintiff's Response to the Motion for Summary Judgment. Oral Arguments for both Motions were heard on November 1, 2024. On November 11, 2024, Plaintiff filed a Sur Reply to the Township's Motion for Summary Judgment. The matter is now ripe for disposition.

STANDARD OF REVIEW

Summary judgment is appropriate only where there is no genuine issue of material fact and the record, viewed in the light most favorable to the non-moving

party, is clear that the moving party is entitled to judgment as a matter of law. *Jones v. Southeastern Pennsylvania Transit Auth.*, 772 A.2d 435, 438 (Pa. 2001). If a Plaintiff is unable to satisfy an element of his cause of action by adducing sufficient evidence to demonstrate that a jury could return a verdict favorable to Plaintiff, then the Defendant is entitled to entry of judgment as a matter of law. *Papas v. UNUM Life Ins. Co. of Am.*, 856 A.2d 183, 187 (Pa. Super. 2004); *Rauch v. Mike-Meyer*, 783 A.2d 815, 821 (Pa. Super. 2001). In reviewing a motion for summary judgment, a court must resolve any doubts as to the existence of a genuine issue of material fact against the moving party. *Jones v. Southeastern Pennsylvania Transit Auth.* at 438. The reviewing court's function is to determine whether there is an issue of fact to be tried, rather than to decide on the issues of fact. *McFadden v. American Oil Co.*, 257 A.2d 283, 286 (1969). A material fact is one that affects the outcome of the case based on the nature of the claim. *Windber Area Auth. v. Rullo*, 387 A.2d 967 (Pa. Cmwlth. 1978).

DISCUSSION

The Township argues it is a local agency and entitled to governmental immunity from damages in personal injury caused by any act of the local agency or any other person citing 42 Pa. C.S. §8541. Pursuant to 42 Pa. C.S. §8542(a), immunity is waived if two conditions are satisfied: (1) a claim recognized at common law, and (2) one of the enumerated exceptions is alleged. Plaintiff has pled two exceptions to immunity. The first exception Plaintiff pled is the trees, traffic controls, and street lighting exception. The second is the streets exception. The Township argues that notice is an essential element to both exceptions to governmental immunity. The trees, traffic controls, and street lighting exception provides that:

A dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting systems under the care, custody

or control of 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.

42 Pa. C.S. § 8542(b)(4). Additionally, the streets exception provides in pertinent part:

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.

42 Pa. C.S. § 8542(b)(6)(i). For the trees and traffic controls exception, notice may be proven by evidence of similar accidents occurring at substantially the same place and under the same circumstances. The Township contends that Plaintiff has failed to adduce any admissible evidence to establish that the Township either had or should have had notice of other accidents at the intersection.

Plaintiff deposed two township employees, including Township Manager Melissa Johnson, and both employees testified that they did not have knowledge of other accidents at the intersection at issue. Township Manager Johnson also testified that she first became aware of the accident in the instant matter when she was sent notice from Plaintiff. Johnson also testified that the Township does not keep track of collisions at intersections within the Township because it does not have its own

police department. Plaintiff also subpoenaed a representative from PennDot, James Leshner. Leshner was provided with a document referred to as “Intersection Crash Report” which was a crash data report for the intersection of Shirksville Road and State Route 343. The report indicated 19 crashes occurred at the intersection between 2003-2019. Leshner was unable to say whether PennDot considered this number of accidents statistically significant in any way due to the volume of traffic that travels through the intersection on an annual basis. Leshner also stated that he was unaware of who created the document, when the data shown in the report was first compiled, or how the data in the report was reported to the Pennsylvania State Police because it was not a PennDot document. Additionally, Leshner was unable to say whether the Township ever received a copy of this report.

In response to the Township’s arguments regarding the notice element, Plaintiff argues that there is ample evidence in the record to establish that the Township had adequate notice of the dangerous conditions of the intersection. Plaintiff argues expert, Justin Schorr, opined that the Township would be the responsible entity for the initial design of the intersection, including placement of the stop sign, and thus should have had reasonable notice of the negligently placed sign. Schorr also opined that the Township would have been the entity which had the best opportunity to recognize the consistent collisions and dangers posed at the intersection. Furthermore, Plaintiff argues that the intersection crash report showed constructive notice because it was available to the public as well as to the Township upon request.

This Court is not persuaded by Plaintiff’s argument and finds that Plaintiff has failed to adduce evidence to show that the Township, had notice of any dangerous conditions of the intersection. Pursuant to 42 Pa. C.S. §8541 “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.”

Furthermore, notice under both exceptions pled by the Plaintiff require that the local agency have “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.” In the instant case, the Township Manager testified that the first time she became aware of the accident was when Plaintiff sent notice after the incident had occurred. She also testified that the Township does not keep track of collisions that occur within the Township because it does not have its own police department.

The main piece of evidence Plaintiff relies on to argue the Township had constructive notice of the dangerous conditions of the intersection was the intersection crash report. Plaintiff has not provided any evidence to show who created the report, when the report was created, or how the data reflected in the chart was collected. Additionally, the Court finds that the evidence of other accidents is insufficient to show the Township had notice. The Court acknowledges that constructive notice under the trees and traffic controls exception can be proven by evidence of substantially similar accidents. However, Plaintiff has failed to adduce evidence that any of the alleged 19 accidents reflected on the crash report occurred at “substantially the same place and under the same or similar circumstance”. The crash report fails to show whether the previous incidents involved a driver who neglected to stop at the stop sign, where a vehicle was making a left turn onto State Route 343 from Shirksville Road, if the collision took place at night, or if there were concerns related to the stop sign, the placement of the stop sign, the sight triangle, an embankment, or the topography of the intersection. Furthermore, Plaintiff has failed to produce any evidence to show the Township ever received a copy of the crash report. Therefore, summary judgment as a matter of law is appropriate as the Township holds governmental immunity pursuant to 42 Pa. C.S. §8541.

The Township also moved for summary judgment on the grounds that Plaintiff failed to adduce any faults with, or contributions to the accident due to the stop sign, the placement of the stop sign, or the design of the stop sign. The Township also argues that Plaintiff failed to provide evidence to establish that the Township had ownership and control of the intersection. The Court acknowledges there is a genuine dispute as to these issues. However, in light of the Court's finding that the Township has governmental immunity, summary judgment is appropriate.

CONCLUSION

After careful consideration of the record and for all the aforementioned reasons, Defendant, Bethel Township's, Motion for Summary Judgment is granted. A concomitant order will be entered consistent with the foregoing.