

SUPREME JUDICIAL COURT OF MAINE

Donovan v. City of Portland

2004 ME 70, 850 A.2d 319 · Decided June 1, 2004

SUMMARY

The Maine Supreme Judicial Court held that the Maine Tort Claims Act barred Kimberly Donovan’s negligence action against the City of Portland after she fell in an exterior area near a public school that was inadequately illuminated. The court concluded that the public-building exception did not apply to lighting deficiencies affecting a sidewalk, curb, or parking area, and affirmed summary judgment for the City. The court also held that any error in striking Donovan’s affidavit was harmless because the disputed facts were immaterial to governmental immunity.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Saufley, C.J.; Alexander, J.; Calkins, J.; Clifford, J.; Dana, J.; Levy, J.; Rudman, J.
JURISDICTION	Maine
DECIDED	June 1, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Superior Court judgment granting the City of Portland summary judgment on governmental-immunity grounds.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence and reasonable inferences are viewed in the light most favorable to the nonmoving party to determine whether the statements of material facts and record evidence reveal a genuine issue of material fact.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Kimberly Donovan v. City of Portland

TOPICS

- municipal liability
- statutory interpretation
- standard of review
- appellate procedure
- negligence

PRACTICE AREAS

- governmental immunity
- municipal tort liability
- summary judgment
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Maine Tort Claims Act's public-building exception to governmental immunity applies when a plaintiff falls on a sidewalk or parking area because exterior lights attached to a nearby public building are unlit.
2. Whether the Superior Court erred by striking Donovan's affidavit because it allegedly contradicted her deposition testimony.
3. Whether summary judgment for the City was proper.

HOLDINGS

1. The Maine Tort Claims Act's public-building exception does not apply when a plaintiff falls on a sidewalk or parking area while exterior lights on a nearby public building are unlit.
2. Any error in striking Donovan's affidavit was harmless because the facts disputed by the affidavit did not affect the governmental-immunity analysis.

KEY QUOTATIONS

“immunity is the rule and exceptions to immunity are to be strictly construed.” (§ 8; 850 A.2d at 320)

“we hold that the Maine Tort Claims Act’s public building exception to governmental immunity does not apply when the plaintiff falls on a sidewalk or parking area while the exterior lights on a nearby public building are unlit.” (§ 15; 850 A.2d at 322-323)

“The City is immune, regardless of the number of lights or the precise location of Donovan’s fall” (§ 16; 850 A.2d at 323)

FACTUAL BACKGROUND

On November 9, 1999, Kimberly Donovan went to Riverton Elementary School, a public building owned and maintained by Portland, to pick up her children. In darkness and fog, she parked in the U-shaped driveway and fell while walking toward an entrance, before reaching the school building or its stairs, injuring her arm. She alleged that unilluminated lights attached to the school caused the fall.

PROCEDURAL HISTORY

Donovan sued the City after falling while walking toward the entrance of a public elementary school, alleging inadequate exterior lighting. The Cumberland County Superior Court struck Donovan's affidavit and granted the City's motion for summary judgment, concluding that the Maine Tort Claims Act immunized the City and that the public-building exception did not apply. Donovan appealed, and the Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- Lever v. Acadia Hospital Corp., 2004 ME 35, 845 A.2d 1178
- Burdzel v. Sobus, 2000 ME 84, 750 A.2d 573
- Thompson v. Department of Inland Fisheries & Wildlife, 2002 ME 78, 796 A.2d 674
- New Orleans Tanker Corp. v. Department of Transportation, 1999 ME 67, 728 A.2d 673
- Kitchen v. City of Calais, 666 A.2d 77 (Me. 1995)
- Swallow v. City of Lewiston, 534 A.2d 975 (Me. 1987)
- Campbell v. Washington County Technical College, 219 F.3d 3 (1st Cir. 2000)

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