RENDERED: DECEMBER 23, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000968-MR

CHANEL LABAT — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KEN COREY, JUDGE
ACTION NO. 97-CI-02988

BURWELL K. MARSHALL — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BUCKINGHAM, GUIDUGLI AND KNOPF, JUDGES.

GUIDUGLI, JUDGE. Chanel Labat (Labat) appeals an order of the Jefferson Circuit Court entered on March 20, 1998, granting Burwell K. Marshall's (Marshall) motion for judgment on the pleadings and dismissing Labat's claims against Marshall. We affirm.

The facts of this case are not in dispute. Labat is a resident of the Parish of Orleans, Louisiana. On or about July 13, 1996, Labat was injured while crossing a manhole cover on the sidewalk in front of 122 West Main Street, Louisville, Kentucky. The manhole cover lid tilted striking her right knee and thigh as

she partially fell into the opening. Marshall owns the premises located at 122 West Main Street.

Labat filed her initial complaint against the Louisville Water Company on June 2, 1997. On June 30, 1997, after learning that the Louisville Water Company may not have a legal duty with respect to the manhole cover, Labat filed her first amended complaint adding defendants Marshall; Mary K. Zena (Zena), lessee of the said premises; the City of Louisville; and John Doe, an unknown individual who is believed to have performed repair work on the manhole cover prior to Labat's fall. On March 19, 1998, the trial court dismissed Labat's action against the City of Louisville because she failed to comply with the ninety-day notice requirement pursuant to KRS 411.110. On April 2, 1998, the trial court dismissed Labat's action against the Louisville Water Company for failure to state a cause of action upon which relief could be granted.

On September 2, 1997, Marshall moved the trial court for a judgment on the pleadings. Labat responded on September 22, 1997. On March 20, 1998, the trial court granted Marshall's motion for judgment on the pleadings. This appeal followed.

Labat argues on appeal that the owner or occupant of the premises abutting the sidewalk is required to maintain a what he now calls a "coal chute" that is constructed for the benefit of said property pursuant to the decision of the Kentucky Supreme Court in Kniffley v. Reid, 152 S.W.2d 615 (1941). The facts of Kniffley and this case differ significantly. Kniffley, a pedestrian, stepped onto a manhole cover and fell into the chute

sustaining certain injuries. The manhole cover had been placed in the sidewalk by Reid's father, for the exclusive use of the building owned by Reid, some thirty-five years prior to the accident. Although the manhole cover was no longer in use, Reid acquired by succession a servitude in the sidewalk. The Kentucky Supreme Court held:

> It was therefore her duty to exercise ordinary care to maintain the manhole cover and its covering in a condition reasonably safe for pedestrians using the sidewalk, and, if she had notice that said chute and its covering were, or either of them was, in a defective condition and had such knowledge for a period of time sufficient to have enabled her, in the exercise of ordinary care, to have repaired it, it was her duty to do so, and if she failed in such duty and the defective condition caused the accident complained of, she is liable to [Kniffley] for the resulting damages.

Id. at 616 (citation omitted) (emphasis added). Reid was held liable for Kniffley's injuries because she had knowledge that the manhole covering was defective prior to the accident.

In the case before us, Labat failed to allege any fact to implicate Marshall as a negligent party in this action. It is undisputed that the alleged incident occurred on the sidewalk adjacent to Marshall's property. Labat did not allege or produce any evidence that Marshall had altered or created a dangerous condition on the sidewalk. Labat did not produce any evidence that Marshall knew or could have known of any defective condition existing in the sidewalk. The trial court found, in its order dismissing Labat's claim, that "[Labat] does not have any evidence that [Marshall] altered or created a dangerous condition on the sidewalk." We agree. Our review of the pleadings has

failed to produce any evidence to the contrary. As such, we cannot say the trial court's decision was an abuse of discretion nor was it clearly erroneous.

"The general rule is that no common-law duty rests upon the owner or occupant of premises abutting on a public street to keep the sidewalk in repair. [citations omitted]. The duty to keep sidewalks in reasonably safe condition for public travel rests primarily upon the municipality." Equitable Life Assur. Soc. v. McClellan, Ky.App., 149 S.W.2d 730, 731 (1941). Marshall argues that he is not liable for Labat's injuries because the duty to maintain a sidewalk rests with the municipality and not the abutting property owner pursuant to the Kentucky Supreme Court's recent decision in Schilling v. Schoenle, Ky., 782 S.W.2d 630 (1990).

Schoenle was injured while crossing a sidewalk that abutted The Aldan Company, a business owned and operated by Schilling. At the time of her fall, a defect in the sidewalk was covered with snow. Schoenle sued Schilling in circuit court. The basis of her complaint was an ordinance enacted by the City of Newport requiring landowners to keep the sidewalks abutting their property in good repair and free from snow, ice, mud and other debris.

The Kentucky Supreme Court, following a similar line of cases, held that ordinances requiring abutting property owners to keep sidewalks clean and in good repair created only a financial obligation on the landowners to bear the cost of maintenance and repair but did not impose liability upon landowners to travelers

injured on the sidewalk. Id. at 633. See also Vissman v. Koby, Ky., 309 S.W.2d 345 (1958); Webster v. Chesapeake O. Ry. Co., Ky.App., 105 S.W. 945, (1907); and Equitable Life Assur., supra. In Webster, the then Court of Appeals reasoned:

> If a municipality could, by placing the liability upon the abutting property owner, relieve itself from the duty of keeping its streets in repair, it would have the effect of relaxing its care and supervision of them. The responsibility would be divided, to the detriment of the public service. If, under an ordinance authorized by the charter, the city may require the property owner to keep in repair the sidewalks in front of his premises, the obligation to do so is one that he owes to the city, and not to the individual. It does not impose any duty the breach of which would render him liable to the traveler.

Webster, 105 S.W. at 946.

The modern theory of liability for sidewalk injuries, as affirmed in Schilling, places the responsibility for sidewalk maintenance and repair with the municipality and not with abutting landowners. As such, Marshall had no duty to maintain the sidewalk or the manhole cover. This duty rests solely with the City of Louisville. Therefore, the trial court appropriately granted Marshall's motion for judgment on the pleadings.

For the foregoing reasons, the decision of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mark B. Geller
Louisville, KY

BRIEF FOR APPELLEE:

Robert T. Watson
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