ROBERT J. MCGUIRE	*	**NO. 2001-CA-0307**
VERSUS	*	**COURT OF APPEAL**
NEW ORLEANS CITY PARK IMPROVEMENT ASSOCIATION AND ABC INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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GORBATY, J., DISSENTS, WITH REASONS.

I agree with the majority opinion as to the law applicable to this case. However, I do not find that City Park breached its duty to protect Mr. McGuire, in that I believe City Park acted reasonably to protect the public from foreseeable injury.

Generally, owners and occupiers of land have a duty to refrain from acting negligently toward those they know or should know will come onto their property. The proper test is ". . . **whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others . . . .**" *Sutter v. Audubon Park Com'n*, 533 So.2d 1226, 1231 (La.App. 4 Cir. 1988) (emphasis added). The duty is not to insure against the possibility of an accident, but to act reasonably. *Id.* Thus, the landowner has a duty to discover any unreasonably dangerous conditions on

the premises and to either correct the conditions or warn of the danger. *Id.* A governmental agency or municipality operating a public park or playground is held to the same degree of care arising from ownership as any other person in possession and control of land; this rule requires that the agency or municipality use reasonable or ordinary care to keep the premises in a reasonably safe condition for those using them. *Id.*

There is record evidence that Mr. McGuire had lived near City Park for many years, had jogged along this very path on numerous occasions, and was aware that the path on which he was jogging traversed a golf course. He admitted that he saw golfers as he was jogging, although he denied seeing a sign listing golf as an activity in the park, or the sign noting "Golf Cart Crossing" near the bridge where he was injured.

The majority opinion states that City Park should have taken steps beyond notifying park visitors that golf was an activity available in the park, or posting signs of golf cart crossings. Rather, City Park should have posted barriers between the golf tee and the road, configured the golf course differently, or closed Palm Drive to pedestrian and bicycle traffic near the golf course. I believe these steps go beyond what is reasonable under the facts of this case. Mr. Frank Mackel, golf director at City Park at the time of the incident, testified that he was not aware of anyone ever being struck

by a golf ball at that location before this incident. Thus, to require City Park to construct a barrier or to close Palm Drive to persons other than golfers enjoying the park exceeds the steps I believe necessary to protect against such a remote possibility of harm.

Accordingly, I believe it was error for the trial court to find City Park liable for Mr. McGuire's injuries, and, therefore, respectfully dissent.