IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shawn Riley and Margaret Riley, h/w,	:	
	:	
Appellants	:	
	:	
v.	:	No. 1027 C.D. 2009
	:	
County of Delaware	:	Argued: November 9, 2009

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: February 9, 2010**

Shawn Riley (Mr. Riley) and Margaret Riley (Mrs. Riley), husband and wife, (together, Plaintiffs), appeal from the order of the Court of Common Pleas of Delaware County (trial court) granting the County of Delaware's (County) Second Motion for Summary Judgment Based on New Case Law (Second Motion) and dismissing Plaintiffs' Complaint, with prejudice. On appeal, Plaintiffs argue that the trial court erred in granting summary judgment in this matter because there remain questions of material fact regarding the applicability of two exceptions to the general grant of governmental immunity pursuant to the act commonly known as the Political Subdivision Tort Claims Act (Act).[1]

[1] 42 Pa. C.S. §§ 8541-8542.

On September 12, 2007, Mr. Riley filed a Civil Action Complaint against the County alleging:

> 2. Defendant is a governmental entity organized and existing under the laws of the Commonwealth of Pennsylvania.
> 3. At all times material hereto, Defendant owned and was in possession, management, maintenance, and/or control of the property located at or about W. Front Street and or near its intersection with N. Orange Street, in Media, Pennsylvania . . . .
> 4. The premises of the Defendant, including the parking lot(s), and other areas of the premises, were open to and used by the general public including . . . [Mr.] Riley . . . .
> 5. On or about February 15, 2006 . . . [Mr.] Riley, was on Defendant's premises, and as he crossed the Defendant's property, there existed an accumulation of ice, water and/or liquid upon the ground which caused . . . [Mr.] Riley, to slip, stumble, and fall (the "accident"), resulting in serious and permanent injuries . . . .
> 6. There were certain irregularities, unevenness, and depressions in said premises, as a result of which . . . [Mr.] Riley, sustained the injuries . . . .
>
> Count I
> Plaintiff, Shawn Riley v. Defendant
> NEGLIGENCE/NEGLIGENCE PER SE
>
> . . . .
> 9. The accident was caused exclusively and solely by the negligence of Defendant in that:
> a. Defendant caused or permitted ice, water and/or liquid to accumulate upon the premises where it posed an unreasonable risk of injury to . . . [Mr.] Riley . . . ;
> b. Defendant failed to remove the accumulated ice, water, and/or liquid from the premises and keep it clear from same;
> c. Defendant failed to properly maintain the premises, allowing certain irregularities, unevenness, and depressions to exist;
> d. Defendant failed to make a reasonable inspection of the premises which would have revealed the existence of the dangerous conditions;

> e. Defendant failed to give warning of the dangerous conditions, erect barricades, or take any other safety precautions to prevent injury to . . . [Mr.] Riley . . .;
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> f. Defendant allowed the premises to remain in a dangerous and unsafe condition;
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> g. Defendant failed to provide a safe walkway for pedestrian travel; and
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> h. Defendant violated ordinances and statutes pertaining to the maintenance of the premises.
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> . . . .
>
> 11. Defendant knew or should have known of the existence of dangerous conditions on the premises.
>
> 12. Solely as a result of Defendant's negligence, carelessness and recklessness . . . [Mr.] Riley, sustained injuries, including, but not limited to the following: intertrochanteric fracture of the left hip; severe shock to his nerves and nervous system; tenderness, swelling, discoloration.
>
> . . . .
>
> Count II
> Plaintiff, Margaret Riley v. Defendant
> NEGLIGENCE – LOSS OF CONSORTIUM
>
> . . . .
>
> 18. As a result of the negligence of Defendant, Plaintiff, Margaret Riley has been deprived of the society, companionship, contributions, and consortium of her husband, Shawn Riley, to her great detriment and loss.

(Complaint ¶¶ 2-6, 9, 11-12, 18.) The County filed an Answer and New Matter in which it asserted, among other defenses, governmental immunity pursuant to Section 8541 of the Act, 42 Pa. C.S. § 8541. (See Answer to Plaintiffs' Complaint with New Matter ¶ 22.) Plaintiffs filed a response denying generally the County's asserted defenses, but Plaintiffs did not specifically refer to one of the statutory exceptions to governmental immunity set forth in Section 8542(b) of the Act, 42 Pa. C.S. § 8542(b). (See Reply to New Matter ¶ 22.)

On August 19, 2008, the County filed its First Motion for Summary Judgment (First Motion), alleging Plaintiffs failed to establish a violation of the "hills and ridges" doctrine applicable to claims arising from falls on any icy and/or snow-covered surface.[2] The trial court denied the First Motion on October 23, 2008. Relying on the Supreme Court's decision in Reid v. City of Philadelphia, 598 Pa. 389, 395-96, 957 A.2d 232, 236-37 (2008), which was decided two weeks before the trial court denied the First Motion, the County filed its Second Motion on April 13, 2009. In the Second Motion, the County argued that it was entitled to summary judgment pursuant to Reid because, in that case, the Supreme Court held the real property exception to governmental immunity did not apply to sidewalks, even those abutting county property. Id. at 396, 957 A.2d at 237. The County contended that it was clear from the record that the fall here occurred on a sidewalk and that the real property exception did not apply. In support of this contention, the County cited to Mr. Riley's testimony that he fell on a County-owned sidewalk. County also relied on Plaintiffs' expert report and deposition testimony that Mr. Riley fell on the County-owned sidewalk and the expert's conclusion that "Delaware County's failure to remove the ice or to have treated the *walkway* before Riley fell was the cause of his fall." (Report of Lawrence C. Dinoff, AIA, at 3 (emphasis added.)

Noting that the "Complaint is utterly bereft of any mention of a 'sidewalk', but replete with references to the fall occurring on 'premises' and 'property,'"

[2] In support of the First Motion, the County cited to sworn deposition testimony from Mr. Riley, County Park Police Officer Thomas Yervelli, and Plaintiffs' Answer to Interrogatories, that the *sidewalk* where Mr. Riley fell had been cleared of snow and that there was just a dusting thereof on the surface at the time of his fall.

(Trial Ct. Op. at 10), the trial court inferred that Plaintiffs were relying on the real property exception to governmental immunity. Agreeing with the County that Reid was dispositive as to the applicability of the real property exception in this matter, the trial court granted the Second Motion and ultimately dismissed Plaintiffs' Complaint with prejudice. The trial court questioned whether Plaintiffs were alleging that Mr. Riley's fall occurred on the County's "real property or premises or sidewalk or driveway," however, the trial court ultimately concluded that to the extent Plaintiffs sought to allege that Mr. Riley fell in the County's driveway or parking lot, those allegations were waived because the Plaintiffs failed to raise those allegations prior to their appeal. (Trial Ct. Op. at 6, 27.)

The trial court questioned why Plaintiffs did not raise the sidewalks exception to governmental immunity. (Trial Ct. Op. at 11.) Despite its query, the trial court concluded, relying on Reid,[3] that Plaintiffs had waived the sidewalks exception by failing to specifically raise it in their Complaint or Reply to New Matter. The trial court explained:

> Despite the ruling in Reid, [Plaintiffs] continued to assert that their claims arose from an injury on the [County's] real property, even after they were foreclosed from doing so by Reid. It is only at the last minute and despite [Mr. Riley's] admission to falling on a sidewalk, that they are asserting that the fall occurred in a driveway instead. . . .

[3] In Reid, our Supreme Court states:

> The sidewalks exception clause imposes a heavier burden of proof on a plaintiff than the real property exception clause. The real property exception clause imposes liability if an agency causes injury due to negligence in the care, custody, or control of its real property. The sidewalks exception clause, however, requires proof that, in addition to being negligent, the agency had notice of the dangerous condition and opportunity to remedy the condition, and failed to do so. *Appellees did not assert the sidewalks exception clause here.*

Reid, 598 Pa. at 392 n.1, 957 A.2d at 234 n.1 (citations omitted) (emphasis added).

> [I]t is exceedingly puzzling why [Plaintiffs] persist in evading assertions and argument supporting a pleading of their cause of action under the [Act's] express sidewalk[s] exception found in 42 Pa. C.S. § 8542(b)(7) because it is the one subsection of the [Act] that might afford them relief.
>
> This Court, perforce, pursuant to Reid, had no choice but to grant the [County's] Second Motion for Summary Judgment Based on New Case Law and dismiss the [Plaintiffs'] Complaint with prejudice.

(Trial Ct. Op. at 11-12.) Accordingly, the trial court granted the Second Motion and dismissed the Complaint with prejudice. Plaintiffs now appeal to this Court.

"Summary Judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Pritts v. Department of Transportation, 969 A.2d 1, 3 (Pa. Cmwlth. 2009). "To successfully challenge a motion for summary judgment, a party must show through depositions, interrogatories, admissions or affidavits that there are genuine issues of material fact to present at trial." Id. Our review of a trial court order granting summary judgment is limited to determining whether the trial court erred as a matter of law or abused its discretion. Irish v. Lehigh County Housing Authority, 751 A.2d 1201, 1203 n.4 (Pa. Cmwlth. 2000). When reviewing a trial court's grant of summary judgment, this Court "must examine the record in a light most favorable to the non-moving party, accepting as true all well-pleaded facts and reasonable inferences" drawn from those facts. Id.

On appeal, Plaintiffs argue that the trial court erred because: (1) the real property exception to governmental immunity applies in this case; and (2) Plaintiffs alleged facts that would enable a jury to find that the sidewalks exception to governmental immunity has been met in this case.

The Act provides local agencies governmental immunity from liability for any damages they cause to a person or property. 42 Pa. C.S. § 8541. However, several exceptions to immunity are enumerated under Section 8542(b), which provides, in relevant part:

> *(b) Acts which may impose liability.*-The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:
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> . . . .
>
> *(3) Real property.*-The care, custody or control of real property in the possession of the local agency, except that the local agency shall not be liable for damages on account of any injury sustained by a person intentionally trespassing on real property in the possession of the local agency. *As used in this paragraph, "real property" shall not include:*
>
> . . . .
>
> *(iv) sidewalks.*
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> . . . .
>
> *(7) Sidewalks.*-A dangerous condition of sidewalks within the rights-of-way 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. When a local agency is liable for damages under this paragraph by reason of its power and authority to require installation and repair of sidewalks under the care, custody and control of other persons, the local agency shall be secondarily liable only and such other person shall be primarily liable.

42 Pa. C.S. § 8542(b) (emphasis added).

Plaintiffs first argue that the trial court erred in determining that the real property exception to immunity did not apply. They contend that the logical inferences that can be drawn from the facts and statements from Plaintiffs' expert report[4] are that:

> 1) the County should not have allowed or caused snow to be piled on their real property (not on the sidewalk, but on the adjoining real property), and 2) the County negligently designed the driveway ramp so as to cause drainage onto the driveway and a neighboring sidewalk, placing pedestrians in peril.

(Plaintiffs' Br. at 13.) Plaintiffs argue that "the driveway and surrounding real property, *excluding the sidewalk*, was a substantial cause of Mr. Riley's fall." (Plaintiffs' Br. at 13 (emphasis added).) Plaintiffs also argue that "it is unclear as to whether Mr. Riley fell on a sidewalk or on a portion of County property that can be excluded from the definition of sidewalk." (Plaintiffs' Br. at 13.) For instance, Plaintiffs argue that a jury could "find that the fall occurred on the ice and snow covered, non-sidewalk portion of the County's property [and, thus,] the County may be held liable under the real property exception." (Plaintiffs' Br. at 13 (citing Kilgore v. Philadelphia, 553 Pa. 22, 29, 717 A.2d 514, 518 (1998).) Plaintiffs

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[4] Plaintiffs rely on their expert's report, and state that:

> [Mr.] Riley fell where the sidewalk is crossed by a driveway serving the multi-story garage. [R. 184a]. Before [Mr.] Riley's fall, the roadway, driveway and sidewalk had all been plowed, and ***snow was piled along both sides of the sidewalk.*** [R. 184a]. Temperatures on the 13th and 14th cycled above freezing during the day, and piled snow melted during those periods. [R. 184a]. Temperatures also dropped below freezing make [sic] it predictable that the melt runoff would refreeze. [R. 184a]. ***The icy area where [Mr.] Riley fell was in the path of drainage from the driveway ramp and from snow piled on either side of the sidewalk west of the driveway.*** [R. 185a].

(Plaintiffs' Br. at 12 (emphasis in original) (bracketed citations in original).)

believe a jury could also conclude that the County is liable under the real property exception to governmental immunity if it found that the location where Mr. Riley fell served a "dual purpose," in which sidewalks are part of a driveway. (Plaintiffs' Br. at 13.) We disagree.

Contrary to Plaintiffs' assertions, there is no real factual dispute over where Mr. Riley fell that would need to be presented to a jury. The evidence presented in support of the Complaint establishes that Mr. Riley slipped and fell on a County-owned icy sidewalk. Mr. Riley explained what happened on the day of the accident:

> Q. Just describe in your own words what happened.
> A. I parked the car next to the Sovereign Bank here in Media across from the public defender and the parking garage of the jury lounge, got out of the car. Normally I would have just walked across the street through the parking meters, but the snow was piled up. So I walked to the front of the entrance to the jury parking garage, made a left, took two steps, slipped, fell, went down on my left side. . . .
> . . . .
> Q. How would you describe what the weather conditions were at that moment?
> A. At that moment it was not freezing cold but cold, and I just walked across the sidewalk and --
> Q. So the moment when you actually did have your fall occurred when you got to the sidewalk; is that correct?
> A. Yes.
> . . . .
> Q. How would you describe what the condition of the sidewalk was where you fell?
> A. Slippery.
> Q. Was it snow-covered?
> A. There was some snow because [there] was a light breeze coming.

(Mr. Riley's Dep. at 16, 18, 20.) Plaintiffs also submitted the deposition testimony of County Park Police Officer Thomas Yervelli, who testified as follows:

> Q. And after you walked down to the male subject, what happened next?
> A. As I walked down, I got close to the subject, I almost slipped, regained myself, confronted the subject, asked what happened, he had told me that he had fell, that he had pain.
> . . . .
> Q. Where was it that you almost slipped?
> A. Where the sidewalk and the driveway [to the jury parking lot] meet.
> Q. And what caused you to slip?
> A. Ice.

(Officer Yervelli Dep. at 16-18.) Further, the expert report submitted by Plaintiffs is replete with references as to how Mr. Riley slipped on the sidewalk and why the County was negligent in failing to remove the ice from the sidewalk. (See Report of Lawrence C. Dinoff, AIA, at 1-3.)[5]

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[5] The expert report provides, in part:

> On February 15, 2006, Shawn Riley slipped and fell on an icy sidewalk at the base of the West Front Street drive ramp of the Delaware County Government Center Parking Garage, Media, PA.
>
> Robson Forensic, Inc. was requested to determine *if conditions where Riley fell were dangerous* in a manner that caused his fall.
>
> . . . .
>
> *The sidewalk in question* is on the north side of West Broad Street running west from South Orange. The Delaware County office complex is on the northeast corner of the intersection of Broad and Orange, Sovereign Bank is on the southwest corner, and the County's parking garage is on the northwest corner, set back about 100 feet north of Broad.
>
> [Mr.] Riley fell where the *sidewalk* is crossed by a driveway serving the multi-story garage. A 22' wide asphalt driveway ramp descends from the second garage level to Broad Street with about a 7% slope. There are concrete walkways

Plaintiffs' responses to interrogatories, and briefs filed in the trial court also describe the place Mr. Riley fell as a "sidewalk." Therefore, there does not appear to be any real factual dispute. Because it is clear that Mr. Riley slipped and fell on

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> with similar slopes on both sides of the driveway, 4' wide on the east side and 2'-2" wide on the west side. . . .
>
> West Board Street is a 36' wide two-way asphalt roadway with curb parking on both sides that has a slight slope down to the east. The *sidewalk in question* is 5' wide, concrete and has a 2' wide buffer strip between the sidewalk and curb. . . .
>
> *[Mr.] Riley fell on the sidewalk* near the west side of the driveway. The curb is depressed across the driveway width and the sidewalk cross slope down to the curb is between 2% and 4%. The sidewalk slope parallel to the curb is generally level except at the flares on each end of the driveway. [Mr.] Riley fell adjacent to the west flare that slopes down to the east about 8% along the sidewalk centerline and at about 25% at the curb.
>
> . . . . Before [Mr.] Riley's fall, the roadway, driveway and sidewalk had all been plowed, and snow was piled along on both sides of the sidewalk. . . .[P]iled snow melted [and t]emperatures also dropped below freezing making it predictable that the melt runoff would refreeze.
>
> . . . .
>
> *[Mr.] Riley had slipped on an area of ice on the sidewalk.* When he slipped, both his feet went out forwards, his body rotated backwards and he landed on his hips and back.
>
> . . . .
>
> [Mr.] Riley slipped on ice while he was following what appeared to be a cleared pathway. . . .
>
> . . . . *The icy area was in the path of drainage from the driveway ramp and from snow piled on either side of the sidewalk west of the driveway. . . . The ice obstructed the sidewalk and was extremely slippery.* The fact that the sidewalk was dangerous was not only predictable, but it would have been identified in the course of any reasonable inspection before [Mr.] Riley fell.
>
> . . . . *Delaware County's failure to remove the ice or to have treated the walkway before [Mr.] Riley fell was the cause of his fall.*
>
> *This sidewalk* was a walkway associated with the operations of the Delaware County Courthouse and Government offices, and was along a path that persons exiting the parking garage would travel as they exited the garage.

(Report of Lawrence C. Dinoff, AIA, at 1-3 (emphasis added).)

a County-owned icy sidewalk, the next question is whether Plaintiffs could prevail as a matter of law in light of the Supreme Court's decision in Reid.

In Reid, the Supreme Court held that the real property exception to local agency governmental immunity is inapplicable to injuries arising from sidewalks, even if the sidewalk abuts local agency property. There, plaintiff attempted to cross a sidewalk abutting a police station, but slipped and fell due to the failure of the city to remove ice and snow, which dangerous condition was compounded with the fact that the city "allowed its employees to park vehicles on the sidewalk." Reid, 598 Pa. at 390, 957 A.2d at 233. After a trial, the city was found primarily liable under the *real property exception* to governmental immunity and this Court affirmed. Id. at 390-391, 957 A.2d at 233. On appeal, the Supreme Court reversed and held that a plain reading of the real property exception to governmental immunity "reveals [that] the legislature intended [the real property exception to] be inapplicable to injuries arising from sidewalks, even if the sidewalk abuts local agency property." Id. at 394, 957 A.2d at 235.

Our Supreme Court's holding in Reid is dispositive to the facts here. Based on the record evidence cited above, there is no question that Mr. Riley fell on a County-owned sidewalk. Moreover, to the extent that Plaintiffs argue that a jury could find that the sidewalk on which Mr. Riley fell served a "dual purpose" as both a driveway and a sidewalk, such argument is unsupported by the record. Mr. Riley and the Plaintiffs' expert testified that Mr. Riley fell on the sidewalk. Although the Supreme Court declined to address a similar "dual purpose" argument raised by the plaintiffs in Reid, it questioned the "dual purpose" theory

and noted that the plaintiffs cited no authority to support such a conclusion. Id. at 396 n.4, 957 A.2d at 237 n.4. Like the plaintiffs in Reid, Plaintiffs here cite no authority to support such an expansive reading of the real property exception. As noted by our Supreme Court, "[b]ecause of the clear intent to insulate government from exposure to tort liability, the exceptions to immunity are to be *strictly* construed." Lockwood v. City of Pittsburgh, 561 Pa. 515, 520, 751 A.2d 1136, 1139 (2000) (emphasis added). In light of these instructions, and the lack of legal authority to support Plaintiffs' "dual purpose" theory, we decline to interpret the real property exception as broadly as Plaintiffs advocate. Accordingly, we hold that the trial court did not err in relying on Reid to conclude that the real property exception was unavailable to Plaintiffs.

The second issue on appeal is whether Plaintiffs' Complaint could survive summary judgment based on the sidewalks exception to governmental immunity. The trial court held that the sidewalks exception was inapplicable because Plaintiffs did not specifically identify that exception in its Complaint or Answer to New Matter. Plaintiffs argue that, despite their failure to refer to a particular exception, the facts "alleged in the pleadings and adduced during discovery" would enable a jury to find that the sidewalks exception to governmental immunity has been met in this case. (Plaintiffs' Br. at 14.) Plaintiffs contend that, contrary to the trial court's determination, Reid does not require a specific pleading, and this Commonwealth uses a system of fact pleading, not "theory" pleading. "A plaintiff is free to proceed on any theory of liability which the facts alleged in his complaint will support." (Plaintiffs' Br. at 14 (quoting Kuisis v. Baldwin-Lima-Hamilton Corp., 457 Pa. 321, 326 n.8, 319 A.2d 914, 918 n.8 (1974)).) Before this Court,

the County does not argue that Plaintiffs cannot prevail on the sidewalks exception because Plaintiffs failed to plead the exception in their Complaint or because Plaintiffs failed to adduce facts that would put it on notice that a dangerous condition existed on its sidewalk.

We agree with Plaintiffs that Reid does not require Plaintiffs to plead the specific exception to governmental immunity under which they intend to proceed. In Reid, there had been a trial in which the parties presented all the evidence and theories for recovery, a verdict, and an appeal prior to the Supreme Court's decision. In this case, we are at an earlier stage of the proceedings: summary judgment. Although Plaintiffs are correct that they did not have to specifically "plead" under which exception to immunity they were proceeding, they must nonetheless have adduced evidence that, if believed by the jury, would permit the application of an exception to immunity. See Ertel v. Patriot-News Co., 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996) (holding that "a non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.")

Upon review of the record, we conclude that Plaintiffs' Complaint pleads sufficient facts, and they have adduced evidence that could, if believed, permit the application of the sidewalks exception to governmental immunity. To establish an entitlement to the sidewalks exception, the plaintiff must show 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)(7).

Although Plaintiffs appear to go to great lengths to avoid mentioning the word "sidewalk" in their Complaint, the Complaint, nonetheless, identifies the location where Mr. Riley fell as a County-owned sidewalk and that the County had constructive notice of the icy conditions:

> 3. At all times material hereto, Defendant owned and was in possession, management, maintenance, and/or control of the property located at or about W. Front Street and or near its intersection with N. Orange Street . . . and the surrounding premises . . . .
> . . . .
> 9. . . .
> . . .
> g. Defendant failed to provide a safe walkway for pedestrian travel;
> . . . .
> 11. Defendant knew or should have known of the existence of dangerous conditions on the premises.

(Complaint ¶¶ 3, 9(g), 11.) Moreover, the evidence submitted in support of the Complaint, if believed, might establish that the County had constructive notice of the icy sidewalk conditions at a sufficient time to prevent injury to those using the sidewalk. Plaintiffs' expert report provides, in pertinent part:

> [Mr.] Riley fell at 8 a.m. on February 15th. According to the Compuweather report, the last precipitation had ended on February 12th after a two-day storm that deposited approximately 12 inches of snow. Before [Mr.] Riley's fall, the roadway, driveway and sidewalk

> had all been plowed, and snow was piled along on both sides of the sidewalk. Temperatures on the 13th and 14th cycled above freezing during the day, and piled snow melted during those periods. Temperatures also dropped below freezing making it predictable that the melt runoff would refreeze.
>
> . . . .
>
> There hadn't been any precipitation for days before this incident. The icy area was in the path of drainage from the driveway ramp and from snow piled on either side of the sidewalk west of the driveway. Based on the weather history, ice in this area was predictable before [Mr.] Riley fell. The melting that caused runoff to this area occurred the previous day and the freezing that turned that runoff to ice occurred hours before [Mr.] Riley fell. The ice that caused [Mr.] Riley's fall existed for hours before he fell. The ice obstructed the sidewalk and was extremely slippery. The fact that the sidewalk was dangerous was not only predictable, but it would have been identified in the course of any reasonable inspections before [Mr.] Riley fell.
>
> . . . .
>
> This sidewalk was a walkway associated with the operation of the Delaware County Courthouse and Government offices, and was along a path that persons exiting the parking garage would travel as they exited the garage. The county offices and courthouse were open for business at 8 am, and it was predictable that jurors, workers and others would be walking through this area before [Mr.] Riley fell.

(Report of Lawrence C. Dinoff, AIA, at 2-3.) Because Plaintiffs have pleaded facts and adduced evidence that, if credited, could permit application of the sidewalks exception to immunity, there are questions of material fact that remain and summary judgment was not proper.

Accordingly, although we agree with the trial court's conclusion that the real property exception to governmental immunity does not apply, we must reverse the trial court's order granting summary judgment and dismissing the Complaint with

prejudice. Therefore, this matter is remanded to the trial court for Plaintiffs' action in negligence to proceed.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shawn Riley and Margaret Riley, h/w,	:	
	:	
Appellants	:	
	:	
v.	:	No. 1027 C.D. 2009
	:	
County of Delaware	:	

O R D E R

NOW, February 9, 2010, the order of the Court of Common Pleas of Delaware County in the above-captioned matter is hereby **REVERSED**, and this matter is remanded to the trial court for further proceedings.

Jurisdiction relinquished.

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RENÉE COHN JUBELIRER, Judge