

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tami L. Notarangelo,	:	
	:	
v.	:	No. 958 C.D. 2007
	:	Submitted: February 11, 2008
Erie School District	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: March 6, 2008

Tami L. Notarangelo (Plaintiff) appeals an order of the Erie County Common Pleas Court (trial court) sustaining the Erie School District’s (Defendant) preliminary objections to her negligence complaint. Plaintiff seeks damages for injuries sustained when she fell off the shoulders of another student onto an unprotected floor. On appeal, Plaintiff asserts her injuries resulted from Defendant’s failure to utilize safety mats and, as such, her claims fall within the real property exception to immunity under the act commonly known as the Political Subdivision Tort Claims Act (Tort Claims Act).¹ We affirm.

¹ 42 Pa. C.S. §§8541-64. Generally, a local government agency is not liable for damages resulting from injury to a person or property caused by an act of the local agency or any of its employees. 42 Pa. C.S. §8541. However, there are exceptions to the grant of immunity. Specifically, Section 8542 of the Tort Claims Act provides that a local agency shall be liable for damages if: 1) the damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having a defense available under Section 8541 or 8546 (relating to defense of official immunity); 2) the negligent acts of the local agency or its employee acting within the scope of his office or duties caused the injury; and 3) the claim falls within one of the statutory exceptions to immunity. 42 Pa. C.S. §8542(a). The real property exception, applicable here, imposes liability for negligent acts resulting from the **(Footnote continued on next page...)**

In a one-count complaint, Plaintiff alleged the following. Plaintiff participated in a show choir class while a student at Central High School. The class involved singing and choreographed dancing. On March 25, 2003, Plaintiff fell off the shoulders of a classmate onto the hard floor while practicing a dance move. Plaintiff hit her chin on the unprotected floor and sustained injuries to her lips and teeth. Seeking damages in excess of arbitration limits, Plaintiff averred that Defendant negligently failed to place safety mats on the floor, provide experienced spotters and, take other precautionary steps to ensure Plaintiff's safety.

Defendant timely filed preliminary objections to Plaintiff's complaint asserting immunity from suit. The trial court sustained Defendant's objections and dismissed the complaint.

Plaintiff filed a notice of appeal to this Court. In response, the trial court issued an order directing Plaintiff to file a Concise Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. 1925(b). The trial court subsequently issued an opinion in which it concluded this Court's decision in Rieger v. Altoona Area School District, 768 A.2d 912 (Pa. Cmwlth. 2001), precluded Plaintiff's claims.²

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“care, custody or control of real property in the possession of the local agency” 42 Pa. C.S. §8542(b)(3).

² In Rieger v. Altoona Area School District, 768 A.2d 912 (Pa. Cmwlth. 2001), the plaintiff sustained injuries when she fell off the shoulders of a fellow cheerleader and hit an unprotected floor. The plaintiff filed a negligence claim against the defendant school district invoking the real property exception to local agency immunity. Relying on this Court's decision **(Footnote continued on next page...)**

On appeal,³ Plaintiff argues the absence of safety matting rendered the floor dangerous for its intended use. Further, she claims Defendant's failure to place matting on the floor required her to use the property in a dangerous condition. She takes issue with case law distinguishing between those injuries resulting from personalty located on real property and those injuries resulting from the care, custody and control of the real property itself. Plaintiff implies her claim falls within the latter category, suggesting the absence of matting involves the manner in which Defendant controlled its real property. For its part, Defendant relies on Rieger.

After reviewing the record, the parties' briefs, and the applicable law, we see no need to elaborate on the trial court's thorough and thoughtful opinion. The issue presented in Plaintiff's appeal was ably resolved in the comprehensive

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in Singer by Singer v. School District of Philadelphia, 513 A.2d 1108 (Pa. Cmwlth. 1986), the plaintiff alleged safety mats were an integral part of a gymnasium hardwood floor when used to practice cheerleading stunts. Affirming the lower court's grant of summary judgment in favor of the defendant school district, this Court recognized the Supreme Court's decision in Blocker v. City of Philadelphia, 563 Pa. 559, 763 A.2d 373 (2000), tacitly overruled Singer. In Blocker, the Supreme Court held chattel not affixed to real property remains personalty. Thus, even assuming the failure to provide safety mats constituted negligent conduct, we concluded in Rieger the absence of safety mats could not impose liability under the Tort Claims Act.

³ On appeal from a trial court's order sustaining preliminary objections and dismissing a complaint, we review whether the trial court committed an error of law or an abuse of discretion. R.H.S. v. Allegheny County Dep't of Human Serv., Office of Mental Health, 936 A.2d 1213 (Pa. Cmwlth. 2007). We accept as true all well-pled facts in the complaint, as well as any reasonable inferences deducible from those facts. Id. Preliminary objections in the nature of a demurrer should only be sustained where the pleadings are clearly insufficient to establish a clear right to relief; any doubt must be resolved in favor of overruling the demurrer. Id.

opinion of the Honorable John A. Bozza. Therefore, we affirm on the basis of the trial court's opinion in the matter of Tami L. Notarangelo v. Erie School District, (Dkt. No. 10800-2005, filed July 10, 2007)(C.P. Erie).

ROBERT SIMPSON, Judge

