STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[Filed: March 29, 2019]

DONNA M. QUATTRINI	:	
	:	
v.	:	**C.A. No. KC-2016-0004**
	:	
DAVID OLSEN, Alias in his official capacity as TREASURER FOR THE CITY OF WARWICK, STATE OF RHODE ISLAND DEPARTMENT OF TRANSPORTATION and GASPEE DAYS COMMITTEE	:	

DECISION

McGUIRL, J. Before this Court are individual motions for summary judgment by Defendants: David Olsen, Alias in his official capacity as Treasurer for the City of Warwick (City), State of Rhode Island Department of Transportation (State), and Gaspee Days Committee (Committee). The Plaintiff Donna M. Quattrini (Plaintiff) objects to the motions. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

This action arises out of a slip and fall taking place on May 25, 2015 in the City of Warwick, Rhode Island. (Am. Compl. ¶ 9.) On that day, the Plaintiff was walking on Narragansett Parkway near its intersection with Grenore Street at the Gaspee Days Arts and Crafts Festival (Festival), which is organized and conducted by the Gaspee Days Committee. *Id.* While walking, Plaintiff inadvertently stepped into a pothole in the road, fell, and sustained injuries and has suffered pain of body and mind as a result. *Id.* ¶¶ 10, 20.

The relevant area of Narragansett Parkway is a public road located in the City of Warwick, which is freely open to pedestrian and vehicular traffic. During the Festival, a distance of one mile from the intersection of Post Road to Canonchet Street is closed off to most vehicular traffic. (Peshka Dep. 28:2-19; 41:9-18, Jan. 24, 2018.) Within the barricaded one mile section, craft vendor tents are set up from Post Road and continue for approximately two-thirds of a mile in a southerly direction. *Id.* at 41:19-21. Sawhorse barricades are erected at each end of the street blocking vehicular access and are monitored by City of Warwick detail police officers at each end. *Id.* at 28:15-17. These detail officers are paid for by the Committee and are in addition to two regular patrol officers who monitor the remainder of the Festival. (Farias Dep. 22:18-23, Feb. 19, 2018.)

On the date of the incident, Plaintiff parked at the southern barrier and proceeded past the detail officer on Narragansett Parkway. Subsequently, Plaintiff fell in a pothole after her "heel just fit right in [the pothole] and it was stuck." (Quattrini Dep. 42:2-4, Oct. 27, 2017.) Photographs taken days later and deposition testimony have been introduced in order to determine the size of the pothole; however, the exact size remains unclear. Moreover, it remains unclear what caused the pothole or how long it had existed prior to the incident.

Plaintiff filed a one count Complaint on January 4, 2016 against the City alleging negligence. Plaintiff then filed a seven count Amended Complaint on November 28, 2016. The Amended Complaint brought claims of negligence against the City, the State, and the Committee. Subsequently, all Defendants moved for summary judgment, and a hearing was held on June 11, 2018. At that time, the Court reserved opinion, and a Decision is herein rendered.

II

Standard of Review

'"Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously."' *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (quoting *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013)). This Court can grant summary judgment only if it concludes, "after viewing the evidence in the light most favorable to the nonmoving party, that there is no genuine issue of material fact to be decided and that the moving party is entitled to judgment as a matter of law." *Lacey v. Reitsma*, 899 A.2d 455, 457 (R.I. 2006).

'"The moving party bears the initial burden of establishing the absence of a genuine issue of fact."' *McGovern v. Bank of Am., N.A.*, 91 A.3d 853, 858 (R.I. 2014) (quoting Robert B. Kent et al., *Rhode Island Civil and Appellate Procedure* § 56:5, (2018-19 ed.)). Once the moving party has satisfied its burden, however, "[t]he burden then shifts . . . and the nonmoving party has an affirmative duty to demonstrate . . . a genuine issue of fact." *Id.* "[T]he nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *Mruk v. Mortg. Elec. Registration Sys., Inc.*, 82 A.3d 527, 532 (R.I. 2013). "[C]ompetent evidence[]' . . . is generally presented on summary judgment in the form of . . . '[]depositions, answers to interrogatories, . . . admissions on file, . . . [and] affidavits." *Flynn v. Nickerson Cmty. Ctr.*, 177 A.3d 468, 476 (R.I. 2018) (internal citation omitted).

III

Analysis

In Rhode Island, in order to succeed on "a claim for negligence, 'a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage.'" *Willis v. Omar*, 954 A.2d 126, 129 (R.I. 2008) (quoting *Mills v. State Sales, Inc.*, 824 A.2d 461, 467 (R.I. 2003)). "If no such duty exists, then plaintiff's claim must fail, as a matter of law." *Selwyn v. Ward*, 879 A.2d 882, 886 (R.I. 2005). It is well-settled that "[w]hether a defendant is under a legal duty in a given case is a question of law[]" to be resolved by the court. *Willis*, 954 A.2d at 129 (citing *Martin v. Marciano*, 871 A.2d 911, 915 (R.I. 2005)). "Only when a party properly overcomes the duty hurdle in a negligence action is he or she entitled to a factual determination on each of the remaining elements: breach, causation, and damages." *Wyso v. Full Moon Tide, LLC*, 78 A.3d 747, 750 (R.I. 2013).

The Court will now examine the individual motions presented by the Defendants.

A

David Olsen, in his official capacity as Treasurer for the City of Warwick

The City argues that because Plaintiff was injured on a state road—the portion of Narragansett Parkway between the intersections of Post Road and Spring Green Road—the duty to repair and maintain said street belongs to the State. Accordingly, the City argues that Plaintiff's negligence claim must fail as a matter of law because the City owed no duty to repair or maintain a state road.

Conversely, the Plaintiff contends that state ownership of the road does not extinguish the City's duty because the City had a duty to protect the Plaintiff from all harm because it provided

the necessary support and security for the Festival to operate. Moreover, the Plaintiff avers that the City exerted control over the state owned roadway and thus retained a duty to the Plaintiff by issuing a special license to the Committee, by issuing a police department operations order, and by determining placement of sawhorses to prevent certain vehicular traffic from entering the Festival.

In Rhode Island, "municipalities themselves have a statutory duty to maintain at their expense all highways located within their borders as provided in G.L. 1956 § 24-5-1(a)." *Town of Lincoln v. State*, 712 A.2d 357, 358 (R.I. 1998). Section 24-5-1(a) provides in pertinent part:

> "All highways . . . lying and being within the bounds of any town, shall be kept in repair and amended, from time to time, so that the highways . . . may be safe and convenient for travelers with their teams, carts, and carriages at all seasons of the year, at the proper charge and expense of the town, under the care and direction of the town council of the town, provided that the state shall be responsible for the annual cleaning of all sidewalks on all state highways . . . ." Sec. 24-5-1(a).

A municipality's duty to maintain the highways within its bounds has been extended to include maintenance of sidewalks that are contiguous thereto. *See Carbone v. Ward*, 56 A.3d 442, 446 n.2 (R.I. 2012) ("[t]he General Assembly has allowed an injured person to recover for damages arising from a municipality's failure to keep its sidewalks in a safe condition"). *Id*. at 446.

The state, however, does have the ability to relieve a municipality of this duty by expressly assuming it. *See Pullen v. State*, 707 A.2d 686, 689 (R.I. 1998) (finding that, where the city and state entered into a construction and maintenance agreement in which the state agreed to repair the road in question, "the state assumed the responsibility and duty that otherwise would have been imposed on the city"). The Rhode Island Supreme Court has held that a city has no duty to maintain a sidewalk that is located within its borders when the state has

unequivocally agreed to maintain the roadway. *Pullen*, 707 A.2d at 692. Until the state expressly assumes this duty, however, "the town is obliged to repair sidewalks within its bailiwick." *Town of Lincoln*, 712 A.2d at 358.

Here, it is undisputed, and the State concedes, that the roadway in which the Plaintiff fell is a "State maintained public highway." (Bucci Aff. ¶ 4). Specifically, the state highway includes "Narragansett Parkway at the intersection with Grenore Street[,]" the approximate location of Plaintiff's fall. *Id*. Moreover, the City "does not own" and "is not responsible for the upkeep and/or maintenance. . ." of the portion of Narragansett Parkway specifically identified by the Plaintiff. (Crenca Aff. ¶¶ 5, 6). The State makes no argument to the contrary and expressly concedes its ownership and related maintenance duties of Narragansett Parkway. *See Pullen*, 707 A.2d at 689.

Additionally, the Court is unpersuaded by the Plaintiff's contention that the City maintained sufficient control to retain a duty by providing assistance in the planning and operation of the Festival. Rather, the existence of four City police officers—two of whom were part of a detail paid for by the Committee—combined with assistance blocking Festival roads from certain vehicular traffic is a necessary function of public safety for a festival of this magnitude and does not illustrate control over a state owned road. *See Berman v. Sitrin*, 991 A.2d 1038, 1041 (R.I. 2010) (finding that the city had assumed authority and exercised control over a public easement by enacting ordinances over easement, restricting access, and performing regular maintenance). Moreover, this assistance was provided over a two to three day period, for a limited period of each day, and involved a limited section of the state owned road. *See Maguire v. City of Providence*, 105 A.3d 92, 96 (R.I. 2014) (finding no duty by an abutting landowner when plaintiff failed to produce evidence that defendant designed, developed, repaired, or altered

the public sidewalk).

After viewing the evidence in the light most favorable to the nonmoving party, the Court cannot conclude that the City evidenced control over a clearly state owned road. Accordingly, the City owed no duty to maintain the road in which Plaintiff fell, and thus owed no duty to the Plaintiff. The City's Motion for Summary Judgment is granted.

B

Gaspee Days Committee

The Committee contends that as a private entity it had no control over the maintenance and repair of the public roadway where Plaintiff fell and thus owes no duty to the Plaintiff. Further, even if it is determined that the area where the Plaintiff fell was the Committee's "land," the Committee maintains it was a public easement on which the Committee had no duty for the safety of those walking upon it. Finally, if the area of the alleged injury is considered occupied or controlled by the Committee, then the Committee is immune from suit under Rhode Island's recreational use statute. The Plaintiff objects arguing that the Committee owes a duty of care to those who attend the Festival regardless of the defect because the Committee exerted a high degree of control over Narragansett Parkway on the day of Plaintiff's injuries.

Generally, the duty to maintain and repair public roadways lies with the government and not any private entity. *Berman*, 991 A.2d at 1047. Consequently, because "a landowner neither owns nor controls a public way, [a private party] could not be liable for failing to prevent the injury, even if said injury was foreseeable." *Id.* (citing *Ferreira v. Strack*, 636 A.2d 682, 688 (R.I. 1994)). Furthermore, our Supreme Court has found "that a property owner owes no duty to individuals for the condition of public sidewalks when the property owner has taken no action to create the dangerous condition." *Wyso*, 78 A.3d at 751.

The Rhode Island Supreme Court has similarly applied this rule wherein a private party has no duty to protect the public from a defect on public property when that private party did not own the land, but instead temporarily used public property for its own purposes. *Carlson v. Town of S. Kingstown*, 131 A.3d 705, 710 (R.I. 2016) (holding that defendant little league organization did not have a duty to the plaintiff who went to watch the league's game and claimed injury after falling in a public park); *see also Saunders v. Howard Realty Co.*, 118 R.I. 31, 371 A.2d 274 (1977) (holding that an "owner or occupant of land" does not owe a duty to maintain or repair public way). Accordingly, the duty of a property owner is based "firmly on the landowner's possession of the premises and his or her attendant right and obligation to control the premises[;]" thus, "[the] Court has declined to find a duty where an injury occurred on property not owned by the defendant." *Carlson*, 131 A.3d at 709 (citing *Wyso*, 78 A.3d at 751).

Here, it is undisputed that the Plaintiff was injured on a public roadway which was not owned, operated, or controlled by the Committee. Rather, the status of the road as a public roadway necessitates ownership, maintenance and control by the State, precluding a finding of duty on behalf of the Committee. *See Berman*, 991 A.2d at 1047-48 (finding no duty on behalf of the property owner over which public easement ran when the easement holder performed inspections, regulated use and performed significant maintenance of the easement); s*ee also Ferreira*, 636 A.2d at 686 (holding that a landowner neither owns nor controls a public way and thus could not be liable for failing to prevent injury on a public street). Similar to the Little League organization in *Carlson*, the Committee is a nonprofit entity which assists in the operation of a community Festival on land it does not own, operate, or control, with the permission of state and municipal entities. Moreover, there is no evidence that the Committee

volunteers inspect the roadway on a regular basis, nor are they required or capable of conducting maintenance on the roadway in question. *See Carlson*, 131 A.3d at 709.

Further, the closure of a limited number of streets to all vehicular traffic by placement of sawhorses fails to persuade the Court that the Committee exerted control over a public roadway sufficient to create a duty of care. *See Ferreira*, 636 A.2d at 688 (finding that sporadic requests for traffic control by a government entity on a public highway do not create a duty on the abutting landowner). Rather, the closure of the streets encourages foot traffic over a limited period during the Festival while at the same time not preventing individuals who have no interest in the Festival from using the public road. *See Berman*, 991 A.2d at 1048 (finding no duty on the defendant property owner over which public easement runs where defendant "cannot restrict or limit access to the easement").

It is undisputed that the Plaintiff was injured on a public roadway and not on any land owned or controlled by the Committee. In addition, the Plaintiff has made no allegation that the Committee caused the defect in the public roadway, and there is simply no evidence to suggest such. As a result, the Committee owed no duty to the Plaintiff with regard to the dangerous condition—the pothole—in the roadway. Accordingly, the Committee's Motion for Summary Judgment is granted.

C

State of Rhode Island Department of Transportation

The State argues that the maintenance of a public roadway is a discretionary governmental function which immunizes the State from liability under the public duty doctrine. Specifically, the State contends that the Plaintiff has failed to meet the requirements of either the special duty or egregious conduct exceptions to the public duty doctrine and is thus precluded

from recovery. In the alternative, the State argues that the Plaintiff's claims cannot succeed because the recreational use statute codified as G.L. 1956 §§ 32-6-1 *et seq.*, shields the State from liability in this matter.

The Plaintiff objects arguing that genuine issues of material fact remain as to applicability of the public duty doctrine. Next, assuming arguendo that the doctrine is applicable, the Plaintiff contends that the egregious conduct exception applies because the State created the situation in which Plaintiff fell by failing to maintain the road after constructive knowledge of the defect and adequate opportunity to remedy said defect. In addition, the Plaintiff contends that genuine issues of material fact remain relating to the applicability of the recreational use statute on a state owned roadway. Accordingly, the Plaintiff argues that summary judgment should be denied.

1

Public Duty Doctrine

This Court must determine whether the public duty doctrine shields the State from liability in the instant action. Generally, "the public-duty doctrine immunizes the state from 'tort liability arising out of discretionary governmental actions that by their nature are not ordinarily performed by private persons[.]'" *Roach v. State*, 157 A.3d 1042, 1050 (R.I. 2017). "[T]he . . . test turns on the 'actual function'" of the government action. *Id.* at 1051. (citing *Adams v. R.I. Dept. of Corr.*, 973 A.2d 542, 546 (R.I. 2009)). Indeed, "many activities performed by government could not and would not in the ordinary course of events be performed by a private person at all." *O'Brien v. State*, 555 A.2d 334, 336-37 (R.I. 1989). '"Among such activities would be those that we have considered in our cases, such as licensing of drivers, management and parole of incarcerated prisoners, and the exercise of the police power through officers

authorized and empowered by the state to perform a police function.'" *Roach*, 157 A.3d at 1050 (quoting *O'Brien*, 555 A.2d at 337)). "[T]he exercise of these functions cannot reasonably be compared with functions that are or may be exercised by a private person." *Id.*

However, the Court has carved out two exceptions to the public duty doctrine, which if present, may impose state and municipal liability notwithstanding the presence of a state function: '"(1) when the governmental entity owes a 'special duty' to the plaintiff, [and] (2) when the alleged act or omission on the part of the governmental entity [is] egregious . . . ."' *See Roach*, 157 A.3d at 1050 (quoting *Medeiros v. Sitrin*, 984 A.2d 620, 628 n.7 (R.I. 2009)).

The first exception, known as the special duty exception, is triggered when the plaintiff establishes the following three circumstances:

> "(1) one or more [government] officials had some form of prior contact with or other knowledge about [the injured] or her situation before the alleged negligent act . . . occurred, (2) [government] officials thereafter took some action directed toward [the injured] or her interests or failed to act in some way that was potentially injurious to [the injured's] person or property, and (3) [the] injury . . . was a reasonably foreseeable consequence of the [government's] action or inaction." *Schultz v. Foster-Glocester Reg'l Sch. Dist.*, 755 A.2d 153, 155-56 (R.I. 2000) (citing *Quality Court Condo. Ass'n v. Quality Hill Dev. Corp.*, 641 A.2d 746, 750 (R.I. 1994)).

The second exception, known as the egregious conduct exception, provides that the government will not be shielded from liability "where it 'has knowledge that it has created a circumstance that forces an individual into a position of [extreme] peril and subsequently chooses not to remedy the situation."' *Martinelli v. Hopkins*, 787 A.2d 1158, 1168 (R.I. 2001). To determine whether the government's conduct is egregious, a court will consider:

> "(1) whether that entity created or allowed for the persistence of 'circumstances that forced a reasonably prudent person into a position of extreme peril,' (2) whether that entity had 'actual or constructive knowledge of the perilous circumstances,' and (3)

> whether that entity 'having been afforded a reasonable amount of time to eliminate the dangerous condition, failed to do so.'" *Tedesco v. Connors*, 871 A.2d 920, 924 (R.I. 2005) (citing *Haley v. Town of Lincoln*, 611 A.2d 845, 849 (R.I. 1992)).

Nonetheless, it should be noted that "a determination of the egregious conduct exception is a mixed question of law and fact and, therefore, a trial justice must allow a jury to find the predicate or duty-triggering facts, provided any exist, in making such a determination." *Id.* at 926.

As a threshold matter, the Court must determine whether the doctrine applies by analyzing whether the state's conduct is something that a private individual usually performs. *See Roach*, 157 A.3d at 1051-52. Rhode Island courts have long held that the maintenance of public roadways is a discretionary governmental function subject to the public duty doctrine. *See, e.g.*, *DeFusco v. Todesco Forte, Inc.,* 683 A.2d 363, 365 (R.I. 1996) (maintenance and construction of public roads deemed a governmental activity not performed by private individuals); *Misurelli v. State, Dep't of Transp.*, 590 A.2d 877, 878 (R.I. 1991) (maintenance of public roads deemed an activity performed by the government); *Knudsen v. Hall*, 490 A.2d 976, 978 (R.I. 1985) (identifying that the state's statutory duty to maintain roads runs to the public at large); *Pullen*, 707 A.2d at 689 (reiterating that "[t]he establishment and maintenance of public highways are functions of the state"). In the present matter, it is clear that the maintenance and repair of the roadway was a discretionary government function, and not an activity normally performed by private citizens. Thus, the public duty doctrine will apply to the issue herein, and unless an exception applies, the State would be protected from tort liability in this case.

The Plaintiff does not assert a special relationship existed in this situation, so the Court will proceed to an analysis of whether the State's action falls within the "egregious conduct" exception to the public duty doctrine. The egregious conduct exception is applicable when "'the

state has knowledge that is has created a circumstance that forces an individual into a position of peril and subsequently chooses not to remedy the situation[.]'" *Boland v. Town of Tiverton*, 670 A.2d 1245, 1248 (R.I. 1996) (quoting *Houle v. Galloway Sch. Lines, Inc.*, 643 A.3d 822, 826 (R.I. 1994)). If a plaintiff can demonstrate that the state's conduct rises to the level of egregiousness, she will be allowed to pierce the "protective shell" afforded to the state. *See Tedesco*, 871 A.2d at 924.

To determine whether the governmental entity's conduct is egregious, a court will consider: "(1) whether that entity created or allowed for the persistence of 'circumstances that forced a reasonably prudent person into a position of extreme peril'; (2) whether that entity had 'actual or constructive knowledge of the perilous circumstances'; and (3) whether that entity 'having been afforded a reasonable amount of time to eliminate the dangerous condition, failed to do so.'" *Id.* (citing *Haley*, 611 A.2d at 849). Moreover, "[o]nly after a plaintiff satisfies all these elements will a claim of governmental negligence survive dismissal under this exception." *Tedesco*, 871 A.2d at 924.

In the present case, the Plaintiff did not produce any evidence demonstrating that the State had actual knowledge of the alleged defect in the roadway. Rather, the State proffers the Affidavit of Joseph A. Bucci, P.E. (Mr. Bucci), a State Highway Maintenance Operations Engineer, who attests that "RIDOT received no complaints prior to [the date of Plaintiff's fall] regarding potholes or any other incidents or accidents related to potholes at or around Narragansett Parkway at the intersection with Grenore Street." (Bucci Aff. ¶ 6.) In addition, Mr. Bucci continues that "RIDOT received no complaints subsequent to [the date of Plaintiff's fall] regarding potholes or any other incidents or accidents related to potholes . . . ." *Id.* ¶ 7. However, "actual notice of a defect in one of its public ways is not a necessary condition of a

municipality's liability for an injury occasioned by the public way." 19 Eugene McQuillin, *The Law of Municipal Corporations* § 54:183 (3d ed. 2018 update). "Constructive notice—notice which the law imputes from the circumstances of the case and is based on the theory that negligent ignorance is no less a breach of duty than willful neglect"—may be sufficient. *See id*.

Our Supreme Court has stated that "[t]he test of constructive notice is not dependent upon the lapse of time alone but upon the special circumstances prevailing in each particular case." *Priestley v. First Nat'l Stores*, *Inc*., 95 R.I. 212, 215, 186 A.2d 334, 336 (1962). Furthermore, "[c]onstructive notice is established when the evidence shows that the defective condition, although not actually known by the city, could have been known by the exercise of ordinary diligence and care on its part." 19 Eugene McQuillin, *The Law of Municipal Corporations* § 54:183 (3d ed. 2018 update).

Here, factual allegations contained in the pleadings and thus far developed during discovery, when viewed in a light most favorable to the nonmoving party, are insufficient for the Court to find that the State is entitled to a judgment as a matter of law at this time. Specifically, the applicability of the egregious conduct exception is a fact-intensive inquiry which requires a determination of factual issues on which reasonable minds could differ. *See Tedesco*, 871 A.2d at 925-26. Accordingly, genuine disputes of facts remain regarding the size of the pothole, when the pothole developed, and whether this would place the State constructively on notice for purposes of the egregious conduct exception. *See id.* at 928 (finding that a trial justice, "in determining the applicability of the egregious conduct exception, [ ] submit the predicate or duty-triggering questions of fact to a jury when those facts are disputed and an evidentiary basis exists to support such a finding"). Accordingly, summary judgment on the basis of the public

duty doctrine is inappropriate at this time, and the Court will proceed to an examination of the applicability of the recreational use statute.

2

Recreational Use Statute

The State also argues that summary judgment is appropriate because the recreational use statute precludes the imposition of liability. Under the recreational use statute,[1] landowners who make their property available to the public for recreational use[2] and do not charge an admission fee will be immune from premise liability pursuant to § 32-6-3. In other words, the statute limits a recreational landowner's liability for personal injuries sustained by recreational users on his or her property. *See* § 32-6-3; *see also Smiler v. Napolitano*, 911 A.2d 1035, 1038-39 (R.I. 2006).

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[1] The recreational use statute, in pertinent part, provides that:

> "[A]n owner of land who either directly or indirectly invites or permits without charge any person to use that property for recreational purposes does not thereby:
>
> "(1) Extend any assurance that the premises are safe for any purpose;
>
> "(2) Confer upon that person the legal status of an invitee or licensee to whom a duty of care is owed; nor
>
> "(3) Assume responsibility for or incur liability for any injury to any person or property caused by an act of omission of that person." Sec. 32-6-3.

[2] Section 32-6-2(4) provides that "[r]ecreational purposes" includes, but is not limited to, any of the following:

> "hunting, fishing, swimming, boating, camping, picnicking, hiking, horseback riding, bicycling, pleasure driving, nature study, water skiing, water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, and all other recreational purposes contemplated by this chapter." Sec. 32-6-2(4).

Under the statute, recreational users are treated as trespassers to which the recreational property owner owes no duty except to refrain from willful or wanton conduct. *Id.*; *see also Lacey,* 899 A.2d at 458. This duty only arises after the trespasser is discovered in a position of peril. *Id.* at 1039. Moreover, it is well-settled that the Legislature intended to include state and municipalities among owners that fall under the statute. *Hanley v. State*, 837 A.2d 707, 712 (R.I. 2003).

In general, "statutory immunity [under the recreational use statute] does not depend upon the specific activity pursued by the plaintiff at the time of the plaintiff's injury. Rather, *the inquiry should focus on the nature and scope of activity for which the premises are held open to the public*." *Id*. at 713. Moreover, "*the statute does not require a distinction to be made between plaintiffs depending upon the activity in which each was engaged at the time of the injury*." *Id*. at 714. (Emphasis in original.)

Nevertheless, the statute is not absolute, and there are exceptions that, if met, would pierce the veil of immunity for recreational property owners. Under § 32-6-5(a)(2), immunity is not provided for recreational landowners who charge a fee to enter onto the land. Sec. 32-6-5(a)(2). Additionally, under § 32-6-5(a)(1), the statute does not "limit[ ] in any way any liability . . . [f]or the willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity *after discovering the user's peril*[.]" Sec. 32-6-5(a)(1) (emphasis added); *see Smiler*, 911 A.2d at 1039 ("[r]eflective of tort law pertaining to trespassers, landowners owe no duty of care to recreational users of their property . . . [a]n exception lies, however, if a landowner finds a trespasser in a position of peril"); *see also Berman,* 991 A.2d at 1043-44 ("landowners who open their land for recreational activities have no duty to the public other than to refrain from willful or wanton conduct"). To prove this exception applies, the plaintiff would have to establish that the state was informed of a dangerous condition or was aware of the fact

that others had been injured because of the condition and then failed to respond or warn against the dangerous condition. *Id*. at 1052-53.

Our Supreme Court has examined the applicability of the recreational use statute in varying circumstances; however, this Court is unaware of and has not been directed to instances where the statute has been applied to a state owned road. Rather, the majority of cases interpreting the statute with respect to roadways place the roads within the confines of a state or municipal park. In *Hanley*, 837 A.2d at 713, our Supreme Court found that the state was immune under the recreational use statute from liability for injuries suffered by a camper in a fall that occurred while she was walking on the roadway in a state park that was open for public recreational use. In upholding the trial justice's granting of summary judgment on behalf of the state, the Court highlighted that "the state is entitled to immunity under the statute as the owner of a public park" where the defect in the road in question was located. *Id*. at 712. Similarly, in *Lacey*, 899 A.2d at 458, the Court upheld summary judgment in favor of the state utilizing a recreational use statute defense when a child veered off of a road located within a state park and fell over a cliff while riding his bicycle. In the present matter, the roadway in question is not located within the boundaries of a public park which is held open for general recreational activities by the public and continues to function as a state roadway for the duration of the Festival.

Moreover, the Court is hesitant at this time to expand the scope of the recreational use statute absent a more thorough development of the facts at issue. It is undisputed that Narragansett Parkway is a state owned highway subject to maintenance and upkeep by the State. On the day in question, sections of Narragansett Parkway were cordoned off by Warwick Police for a limited duration. During the Festival, Narragansett Parkway was not entirely off limits to

traffic, as local traffic and emergency vehicles were permitted within the cordoned area as needed. Furthermore, individuals intending to use a neighboring boatyard passed through the Festival. At the conclusion of the day's Festival, Narragansett Parkway would again be subject to its primary use as a state owned road. In essence, facts have yet to be developed relating to whether or not a state owned road that is still functioning as a roadway, albeit more limited than normal, is open for the public's recreational use, thus falling within the purview of the recreational use statute.

As it stands, the Court believes disputed material facts remain regarding the character of the premises and if said premises qualify as being open to the public for recreational activity, which precludes a summary judgment finding for the State under the recreational use statute. Accordingly, the Court finds the recreational use statute inapplicable at this time and denies the State's Motion for Summary Judgment.

IV

Conclusion

The Court at this time grants the City and the Committee's Motions for Summary Judgment. Further, the Court denies the State's Motion for Summary Judgment. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Donna M. Quattrini v. David Olsen, et al.
CASE NO:	KC-2016-0004
COURT:	Kent County Superior Court
DATE DECISION FILED:	March 29, 2019
JUSTICE/MAGISTRATE:	McGuirl, J.

ATTORNEYS:

For Plaintiff:	Andrew S. Caslowitz, Esq.
For Defendant:	Kathleen Anne Hilton, Esq.; Alison Brittany Hoffman, Esq.; Kevin N. Rolando, Esq.