IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

HALEY E. WEEKES, a single person,	)	**No. 29369-6-III**
	)	
Appellant,	)	
	)	
v.	)	**Division Three**
	)	
KITTITAS COUNTY, a municipal corporation,	)	
	)	
	)	
Respondent.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Haley Weekes was seriously injured when her car slid into a pickup truck on an icy county highway. The trial court summarily dismissed her lawsuit against Kittitas County (County) over its snow removal policies. We affirm.

FACTS

A snowstorm struck eastern Washington on November 26, 2006, the Sunday of Thanksgiving weekend. Approximately six inches of snow fell in Kittitas County. In response to the storm, the County plowed and sanded the Caribou Cut section of the

Vantage Highway. The Caribou Cut is a hill that is shaded from the winter sun, making it icier than other portions of the highway. There was no additional snow on the 27th, but the County again plowed and sanded the Caribou Cut that day.

Shortly before 7:00 a.m. on November 28, Haley Weekes, age 20, was driving her car through the Caribou Cut, as she had the day before, en route to work in Ellensburg. The County's road crews had not yet been deployed for the day. As Ms. Weekes crested the hill, she braked and her car went into a skid. It collided with a pickup truck driving up the hill from the other direction. She suffered severe head and internal injuries. The Washington State Patrol attributed the accident to excessive speed given the road conditions and Ms. Weekes' decision to brake and steer on ice. She later testified that she had been travelling at 30-35 mph (in a 50 mph zone) due to the road conditions. When she hit ice at the top of the hill, she applied her brakes and lost control. No other accidents occurred in that area due to this storm.

Ms. Weekes filed a claim with the County, alleging that it had failed to plow and sand the road or use deicer. When the claim was denied, she sued the County, alleging that its negligence caused her injuries. After a year, the County moved for summary judgment, alleging that the plaintiff had failed to state a claim for relief.

The trial court granted the motion, reasoning that (1) the County had taken

reasonable actions to clear the road and was under no obligation to warn drivers of obvious conditions, (2) the policy decision not to use deicer was subject to immunity, and (3) there was no evidence the County was aware of any special hazard at Caribou Cut.

Ms. Weekes timely appealed to this court.

ANALYSIS

Ms. Weekes argues that the County should not have received immunity for its deicer policy and had not taken reasonable actions to clear the road. We will address each argument in turn.

The standards governing this appeal are well-settled. This court reviews a summary judgment *de novo*, performing the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn from them, are viewed in the light most favorable to the nonmoving party. *Id*. If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law. *Id*.

Deicer Policy

Ms. Weekes argues that the County was negligent in not using deicer to clear the Caribou Cut. She argues that the decision not to use deicer was made by the road crew supervisor rather than the County's executive authority. The evidence in the record

supports the trial court's contrary ruling.

An exception to governmental liability exists for policy decisions. This exception is based in the separation of powers doctrine. *Evangelical United Brethren Church v. State*, 67 Wn.2d 246, 253, 407 P.2d 440 (1965). The basic principle is that "the legislative, judicial, and purely executive processes of government, including as well . . . discretionary acts and decisions within the framework of such processes, cannot and should not . . . be characterized as tortious." *Id*. In *Evangelical*, the court concluded that the decision to assign a youthful offender to a medium security "open program" juvenile detention facility, from which he later escaped and destroyed two buildings in an arson fire, was a nontortious discretionary decision of the executive. *Id*. at 255-259. In contrast, the court concluded that the decision to assign him to "boiler room detail" from which he escaped was an "operational" or "ministerial" one that could be subject to tort liability. *Id*. at 259.[1]

Subsequent cases have noted that this exception to liability is very narrow and does not apply to operational decisions by lower level government employees. *E.g.*, *Taggart v. State*, 118 Wn.2d 195, 822 P.2d 243 (1992) (supervisory decisions made by parole officers not entitled to immunity); *Chambers-Castanes v. King County*, 100 Wn.2d

[1] The court ultimately concluded that the State was not liable because the youth's actions after he escaped were not foreseeable. *Id*. at 260-261.

275, 669 P.2d 451 (1983) (decision to dispatch police officers to crime scene not entitled to immunity).

Ms. Weekes argues that the decision not to apply deicer to the Caribou Cut area was made by the road department supervisor rather than the county commissioners, making it an operational decision rather than an executive policy decision.[2] The record does not bear out that view. A county commissioner who previously spent 22 years working for the road department and the road department supervisor both submitted affidavits explaining the County's snow removal program. In essence, the County's program is to plow and sand its roads.[3] This results in about one inch of compacted snow remaining on the roadways because damage to the roads may result from efforts to scrape lower than that level. The County will use deicer, which it must obtain from the State because it does not keep a supply, to remove snow-rutted roads, primarily in the Hyak region in the western county. It does not use deicer other than to remove ruts, although it will use an anti-icing spray countywide in areas where freezing fog is anticipated. These decisions are made by the county commissioners and the road department each year when

[2] For purposes of this opinion, we will assume that only the highest executive authority can make a policy decision that would be subject to immunity. We do not express an opinion as to whether policy decisions that are delegated to other officials might be subject to immunity.

[3] Plows are dispatched when snow accumulations reach three inches. Clerk's Papers (CP) 148.

the budget is prepared. The County had considered using deicer to create bare roads, but determined it was not financially feasible. CP 115-118, 146-157.

Thus, the plow operators working the Caribou Cut area had no opportunity to use deicer on that road, even if they had wanted to do so. That possibility had been eliminated earlier when the decision was made not to pursue or fund a bare roads strategy. That policy was made by the county commissioners in consultation with the road department supervisor. We agree with the trial court that this was a true executive level policy determination rather than an operational decision made by lower level employees. The decision not to use deicer was a policy choice of Kittitas County government and entitled to immunity.

The trial court correctly granted summary judgment on the claim that the County was negligent for not using deicer.

Road Conditions

Ms. Weekes also argues that the County was negligent by failing to maintain its roadways. She argues that the County should have sanded the road again on November 28th and should have removed the ice and snow that was compacted on the highway.

A government has an obligation to maintain roadways in a safe condition. In particular, it must "maintain its roadways in a condition that is reasonably safe for

ordinary travel." *Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002). That does not mean that the government is an insurer of the roadways. *Teater v. City of Seattle*, 10 Wash. 327, 329, 38 P. 1006 (1894). Mere slipperiness is not a basis for liability. *Nelson v. City of Tacoma*, 19 Wn. App. 807, 577 P.2d 986 (1978). Instead, there must be both notice of a dangerous condition that it did not create and an opportunity to alleviate the problem before liability can attach. *Nibarger v. City of Seattle*, 53 Wn.2d 228, 229, 332 P.2d 463 (1958); *Leroy v. State*, 124 Wn. App. 65, 68-70, 98 P.3d 819 (2004). The fact that existing weather conditions are likely to create icy roads is not sufficient to establish liability. *Laguna v. Dep't of Transp.*, 146 Wn. App. 260, 265, 192 P.3d 374 (2008).

There is no indication that Caribou Cut was hazardous in the early morning of November 28th or that the County was on notice that it was particularly dangerous. At most, Ms. Weekes has established that the County knew the area typically was slippery after plowing and that conditions might worsen overnight due to cold temperatures. However, slippery roads do not equate to hazardous roads. *Nelson*, 19 Wn. App. at 809. An expectation that a dangerous condition might develop is not the same as actual notice that a dangerous condition exists. *Laguna*, 146 Wn. App. at 265. Thus, the fact that road conditions might reasonably be expected to deteriorate overnight[4] did not create an

additional duty to immediately be on the lookout for a change of conditions, let alone to single out Caribou Cut for primary attention among the many hundreds of miles of County roadways.

At its essence, the argument Ms. Weekes makes would impose a requirement that the County remove all snow and ice from its roadways. She bases her argument on the County's road priority resolution that states the order in which roads should be "cleared"—a word that she equates with "to make bare." She also reaches that position from her contention that deicer should have been used to remove the compacted snow resulting from the plowing process. The County, however, eschewed a bare roads policy and has never attempted to implement one. Nor has the case law imposed a duty on governments to prevent slippery roads. The duty is to maintain roads in reasonably safe condition and eliminate known hazards. *Keller*, 146 Wn.2d at 249; *Laguna*, 146 Wn. App. at 265; *Leroy*, 124 Wn. App. at 68-69.

An accident occurred on a snow-covered road with tragic consequences for Ms. Weekes. She has not established that the County knew of a dangerous condition that caused her accident. The County did not breach its duty of maintaining the road in a

[4] Nor would an overnight period constitute a sufficient amount of time for the County to remedy the situation. *See Wright v. City of Kennewick*, 62 Wn.2d 163, 167, 381 P.2d 620 (1963) (two-day notice of snow on the ground and formation of recent crust within a few hours of the accident insufficient as a matter of law to impose liability).

reasonably safe condition. Accordingly, the trial court did not err in granting summary judgment.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Siddoway, J.