

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY  
IN THE COURT OF COMMON PLEAS**

<b>RAYMOND McCRAY, a minor by his parent by his parent and natural guardian Stanley McCray AND STANLEY McCRAY, in his own right</b>	:	
	:	<b>CIVIL TRIAL DIVISION</b>
	:	
<b>Appellants/Plaintiffs,</b>	:	<b>MARCH TERM, 2006</b>
	:	<b>No. 1615</b>
	:	
<b>v.</b>	:	<b>Commonwealth Court</b>
	:	<b>Docket No. 2095 CD 2007</b>
	:	
<b>CITY OF PHILADELPHIA</b>	:	
	:	
<b>Appellee/Defendant</b>	:	
	:	

**OPINION**

**PROCEDURAL HISTORY**

Plaintiffs appeal from the Order dated October 22, 2007, wherein this Court granted Defendant’s Motion for Summary Judgment and dismissed Plaintiffs’ Complaint.

**FACTUAL BACKGROUND**

In 2004, the City of Philadelphia (hereinafter City), through its Department of Recreation sponsored a program known as “Playstreets.” (Defendant’s Motion for Summary Judgment, Exhibit C, pg.1). The Playstreets program is intended to provide a safe and fun place for kids to play in the summer. (Id.). To participate in the program, a block must submit an application to the City containing the signatures of 75% of the block residents. (Id.). Additionally, one of the block residents must elect to be responsible as Supervisor of the Play Street (ie. Site supervisor). (Id.). The City provides

the training to the Playstreets Site Supervisor, the majority of which concentrates on food handling and safety. (Id.). Each Play Street is provided with daily lunches and other food by vendors hired by the City. City employees visit each Play Street on approximately a weekly basis. (Id.). These visits are primarily designed to insure that proper food handling and food safety practices are being followed. (Id.). Other than these once-a-week visits, the City does not participate in the daily activities of the Play Streets. (Id., pg. 2). The City provides each Site Supervisor with paper signs (8 ½” x 11”) in order to close the street off from traffic each day. (Id.). Other than signs, the City does not provide any other materials or equipment for use in blocking the street or controlling traffic. (Id.). Nor does the City specify the manner in which the Site Supervisors are to block traffic from their street. (Id.). The sign provided by the City to the Site Supervisors reads, “Play Street Closed To Traffic By Order Of the Police Department.” (Id.). On July 9, 2004, it is alleged that one or more employees of the City Streets Department and or the Department of Recreation cordoned off Ingersoll Street. (Complaint, ¶7). As Raymond McCray approached the 2500 block of Ingersoll Street riding his bicycle he did not observe this string and his neck struck it. (Id.). As a result of the incident Ray McCray suffered a laceration of his neck and scarring that resulted in this action.

On March 14, 2006, Raymond McCray a minor and his father Stanley McCray brought an action against the City for the negligence of its agents, employees or representatives in constructing an inconspicuous barrier causing the aforementioned injuries to Raymond McCray. (Complaint, ¶10). The Plaintiffs alleged injuries not in excess of the arbitration limits.

The case proceeded to Arbitration on November 8, 2006. (Report and Award of Arbitrators). The panel of arbitrators found in favor of the City and against Plaintiffs. (Id.). Plaintiffs thereafter appealed the award.

On August 31, 2007, Plaintiffs filed their Motion for Summary Judgment and the City responded on October 1, 2007. The City also filed a Motion for Summary Judgment on September 4, 2007. (See Docket). The Plaintiffs did not respond to the City's Motion for Summary Judgment, however this Court applied Plaintiffs' arguments in their Motion for Summary Judgment as arguments in opposition to the City's Motion. (See Docket).

By Order dated October 22, 2007, this Court granted the City's Motion for Summary Judgment and dismissed Plaintiffs' Complaint with prejudice. (See Docket). In light of the aforementioned dispositive Order, this Court did not rule on the Plaintiffs' Motion for Summary Judgment. On November 9, 2007, Plaintiffs filed their Appeal to the Commonwealth Court of Pennsylvania and issued their Statement of Matters pursuant to Pa.R.A.P. 1925(b). (See Docket).

The issue on appeal is whether this Court committed an error of law or abused its discretion in granting the City's Motion for Summary Judgment wherein this Court found that the City's actions and involvement did not fall within any of the exceptions to immunity under 42 Pa.C.S.A. §8542.

### **LEGAL ANALYSIS**

A trial court may grant summary judgment as a matter of law when it finds "no genuine issue of any material fact" in dispute, and when "an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to [its] cause of action or defense." Pa. R.C.P. 1035.2. When a motion for summary judgment has been

made by the party that does not bear the burden of proof at trial, the nonmoving party must produce “evidence showing the existence of the facts essential to the cause of action or defense.” Pa. R.C.P. 1035.2 advisory committee’s note.

The trial Court must review the record “in a light most favoring the non-movant giving that party the benefit of credibility determinations and any inferences deducible from the evidence.” *Porter v. Joy Realty, Inc.*, 872 A.2d 846, 849, 2006 PA Super 129, \*5 (Pa.Super. 2005), citing *Griffin v. Central Sprinkler Corporation*, 823 A.2d 191, 199 (Pa.Super. 2003). If there remains “an issue of fact,” then summary judgment should be granted against the non-movant “only when the non-moving party has failed to adduce evidence from which a factfinder could find in his/her favor.” *Porter*, 872 A.2d at 848.

If the trial Court grants summary judgment, the decision should be reversed “only if the trial court has committed an error of law or abused its discretion.” *Bartlett v. Bradford Publ’g, Inc.*, 885 A.2d 562, 566, 2005 PA Super 350, \*10 (Pa.Super. 2005), citing *Weber v. Lancaster Newspapers, Inc.*, 878 A.2d 63, 71 (Pa. Super. 2005). The party choosing to appeal a grant of summary judgment “bears a heavy burden” in persuading the appellate court to draw an opposite conclusion. *Bartlett*, 885 A.2d at 566, citing *Paden v. Baker Concrete Constr., Inc.*, 540 Pa. 409, 412 (Pa. 1995). Even if the appellate court would have ruled differently upon the same facts, a different conclusion by the appellate court does not necessarily indicate an abuse of discretion by the trial court. *See Paden*, 540 Pa. at 414.

Under the Pennsylvania Political Subdivision Tort Claims Act 42 Pa.C.S.A. §8541(hereinafter Tort Claims Act):

Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any

injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

Given this broad grant of immunity, our Supreme Court has held that the Tort Claims Act creates “the absolute rule of governmental immunity” and represents “the expressed legislative intent to insulate political subdivisions from tort liability.” *Mascaro v. Youth Study Center*, 514 Pa. 351, 361 523 A.2d 1118, 1123 (1987).

This expansive immunity of the Tort Claims Act is not without its exceptions. There are certain limited circumstances in which liability upon the City may be imposed. The General Assembly has waived immunity when two distinct conditions are satisfied: (1) the damages would be recoverable under statutory or common law against a person unprotected by governmental immunity, and (2) the negligent act of the political subdivision which caused the injury falls within one of the eight enumerated categories listed in Section 8542(b) of the Tort Claims Act. *Starr v. Veneziano*, 560 Pa. 650, 657, 747 A.2d 867, 871 (2000) (citing *White v. City of Philadelphia*, 553 Pa. 214, 217, 718 A.2d 778, 779 (1998)).

According to 42 Pa.C.S.A. §8542(b), the following acts by a local agency or any of its employees may result in the imposition of liability on a local agency: (1) vehicle liability, (2) care, custody or control of personal property, (3) care, custody or control of real property, (4) care custody or control of trees, traffic controls and street lighting, (5) utility service facilities, (6) streets, (7) sidewalks and (8) care, custody or control of animals.

Plaintiffs contend that the 8 ½ x 11 paper sign given to the Site Supervisor was an “inanimate device or method used to direct either vehicle or pedestrian traffic” and is therefore a traffic control device subject to exception from immunity under 42 Pa.C.S.A.

8542(b)(4). (Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, pg. 6, Statement of Matters). However, Plaintiffs' claim of liability must fail because the City had no duty to erect traffic controls in the area where the incident occurred to Raymond McCray, nor did the City or its agents, employees or representatives erect or post the sign.

To establish a duty of care on the part of a municipality related to the installation of a traffic control device, a plaintiff must demonstrate that: 1) the municipality had actual or constructive notice of the dangerous condition that caused the plaintiff's injuries; 2) the pertinent device would have constituted an appropriate remedial measure; and 3) the municipality's authority was such that it can fairly be charged with the failure to install the device. *Starr*, 747 A.2d at 873.

Plaintiffs' claim that their case involves an exception to the general immunity requirement must fail because the City has no common law or statutory duty to erect traffic controls. Indeed, our Commonwealth Court has repeatedly reaffirmed this longstanding principle. *Carter v. City of Philadelphia*, 137 Pa. Commw. 152, 156, 585 A.2d 578, 579 (1991), *Farber v. Engle*, 106 Pa. Commw. 173, 179, 525 A.2d 864, 867 (1987), *Bryson v. Solomon*, 97 Pa. Commw. 530, 510 A.2d 377 (1986), *Hough v. Commonwealth, Dep't of Transp.*, 155 Pa. Commw. 162, 168, 624 A.2d 780, 783 (1993).

Despite that there is no duty to erect traffic controls, a political subdivision may be liable for negligent maintenance of traffic controls if they do decide to install such controls. However, the City did not post the alleged traffic sign. Rather, the sign indicating that the street was closed was posted by the Site Supervisor for the Play Street, who admittedly is not an employee of the City of Philadelphia. (Stipulated Facts, pg.1).

In *Bruce v. Commonwealth, Dept. of Transp.*, 138 Pa.Comm. 187, 195 A.2d 974, 976 (1991), our Commonwealth Court first considered whether a political subdivision may be liable for failing to maintain traffic controls (i.e., stop sign) within boundaries that were erected by third parties. There, the Department of Transportation had installed a stop sign at the intersection of a state highway and a city street. *Id.* Plaintiff brought suit after a missing stop sign at the intersection caused an accident in which he was involved. *Id.* The evidence showed that the township checked on the stop sign several times a year and may have previously replaced it. *Id.* at 977-978. In affirming the trial Court's granting of summary judgment in favor of the township, the Commonwealth Court reasoned that the township was "under no obligation to replace a stop sign erected by the Department of Transportation or to erect signs warning a motorist that he is approaching an intersection." *Id.* at 978.

As with the *Bruce* case, it has been stipulated to by the parties that the City did not erect the sign or place the string across the intersection from which the sign hung. Instead it was done by a third party who was not an agent, employee or representative. Accordingly, the City neither had a duty to maintain the string in a reasonably safe condition, nor to erect signs warning people of the existence of the string.

The City also cannot be subject to a waiver of their immunity under 42 Pa.C.S.A. §8541 because they do not fall within the exception for care, custody and control of traffic controls under 42 Pa.C.S.A. §8542(b)(4).

Therefore, the City is immune from liability in this case according to 42 Pa.C.S.A. §8541.

**CONCLUSION**

In light of the foregoing analysis, this Court believes that the Defendant's Motion for Summary Judgment was properly granted by this Court, and respectfully requests that it be affirmed by the Court above.

**BY THE COURT:**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**ALLAN L. TERESHKO, J.**