

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

AISHA WATSON and RADU O'CONNOR	:	
in their own rights and AISHA WATSON, as	:	
Administrator on behalf of THE ESTATE OF	:	
JA'BRIEL O'CONNOR, Deceased	:	
Plaintiffs	:	
	:	DECEMBER TERM, 2013
vs.	:	
	:	NO.1563
FAMILIES FORWARD d/b/a TRAVELERS	:	
AID SOCIETY OF PHILADELPHIA, and	:	
CITY OF PHILADELPHIA	:	
Defendants	:	

ORDER

And Now, this *30th* day of July, 2015, after considering the Motion for Summary Judgment filed by the City of Philadelphia, Plaintiffs' Response, and, for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby **ORDERED** that the Motion for Summary Judgment is **DENIED**.

Watson Etal Vs Families-ORDER



BY THE COURT:

Frederica A. Massiah-Jackson

 FREDERICA A. MASSIAH-JACKSON, J.

DOCKETED
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 CIVIL ADMINISTRATION

Court Exhibit "A"

On July 19, 2013, seven year old Ja'briel O'Connor was discovered at the bottom of the Cobbs Creek Recreation Center pool. He was transported to the hospital where he subsequently died. His parents and The Estate of Ja'briel O'Connor initiated this litigation against Travelers Aid Society and the City of Philadelphia.

The City, which owns and operates the Cobbs Creek Pool, has filed this Motion for Summary Judgment asserting that the claims of Plaintiff-Estate are barred by the Tort Claims Act, 42 Pa. C.S. §8541. This Court does not agree.

The Political Subdivision Tort Claims Act provides governmental immunity in pertinent part, at 42 Pa. C.S. §8541:

“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.”

There are eight enumerated exceptions including the real property exception, which is applicable here. 42 Pa. C.S. §8542(b)(3) allows liability for “care, custody or control of real property in possession of the local agency.”

The City's Memorandum relies on negligent hiring, training and supervision, and/or temporary safety devices, and/or life saving equipment, as the basis for its Motion and cites, inter alia, Reiger v. Altoona Area School District, 768 A.2d 912 (Pa. Commonwealth Ct. 2001) which involved temporary floor mats. An exception to immunity, however, exists where

the City negligently cares for the real property itself, Grieff v. Reisinger, 693 A.2d 195, 197 (Pa. 1997), or, if the harm is caused by a fixture which is attached to the land. Blocker v. City of Philadelphia, 763 A.2d 373 (Pa. 2000). See also, Mandakis v. Borough of Matamoras, 74 A.3d 301 (Pa. Commonwealth Ct. 2013).

The Dworkin Expert Report submitted by Plaintiff-Estate identifies City failures and omissions which encompass fixtures as well as negligent care of the property itself, including inter alia, the absence of signage, and, the failure to provide “permanent” demarcation between the shallow and deep ends of the pool.

First, in the Dworkin Report at page 7:

“(3) [City’s] failure to have signage on its property requiring the need for proper and vigilant supervision in the pool for children under 45 inches and/or children who cannot swim;”

This deficit apparently refers to the failure of the City to have secure signage which is attached to the real estate. Without a full factual foundation, however, this Motions Court is not able to make the legal determination whether the signage proposal involves a fixture or personalty. Thus, the Trial Judge must make the legal determination at the non-suit stage. See, Taylor v. Northeast Bradford School District, 101 A.3d 144 (Pa. Commonwealth Ct. 2014). In the Dworkin Report at page 12, the expert advises that he will prepare a comprehensive demonstrative presentation. This supplemental information will provide the Trial Judge an appropriate foundation to render the requisite legal determination:

“Prior to trial and/or my deposition, my intention would be to develop a comprehensive powerpoint presentation, as a demonstrative exhibit of my opinions, to be used to educate the

jury and court as to the industry's Standard of Care and how the City breached this standard resulting in the tragic death of Ja'briel O'Connor."

Next, in the Dworkin Report at page 8:

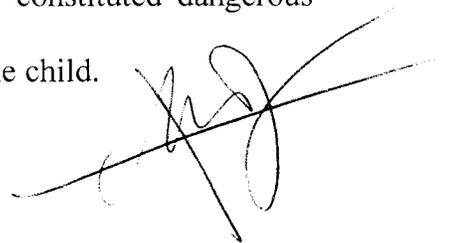
"(11) [City's] failure to properly demarcate the shallow and deep end of the pool with permanent markers, paint, or floating lifelines"

The expert expressly opines that "permanent markers, paint or floating lifelines" were required to make the Cobbs Creek Pool safe. The City had actual knowledge about its negligent care of the real property itself when it failed to provide these permanent safety markers. These omissions do fall within the real property exception of the City's immunity. See, City of Philadelphia v. Duda, 595 A.2d 206 (Pa. Commonwealth Ct. 1991), another litigation involving a City Pool.

Finally, in Mellon v. City of Pittsburgh Zoo, 760 A.2d 921 (Pa. Commonwealth Ct. 2000), the Appellate Court noted at 925:

"It is well settled that the issue of whether a dangerous condition exists is not a question of law for the court but rather a question of fact for the jury to resolve."

Accordingly, it will be up to a jury to determine whether the deficits and defects in the care, custody and control of the real property at the Cobbs Creek Pool constituted dangerous conditions which caused or substantially contributed to the death of the child.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'M. J.', written over a horizontal line.