

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Michelle Lee, independent administrator)
of the estate of Andrew R. Lee, deceased,)
)
Plaintiff,)
)
v.)
)
Matthew J. Cage, Room 183, Inc.,)
d/b/a Room 183, Vance S. Woods,)
and City of Markham,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

Section 3-104 of the Local Governmental and Governmental Employees Tort Immunity Act immunizes municipalities from liability for failing initially to install traffic control devices. The plaintiff claims that the defendants failed to provide notice to the decedent’s driver of a fire engine parked partially in an interstate driving lane. Since section 3-104 provides absolute immunity for such an omission, the defendants’ motion to dismiss must be granted in part and denied in part.

Facts

In the early morning of March 9, 2019, Vance S. Woods, a City of Markham firefighter, responded to an emergency call on Interstate 57 in the City of Markham. Woods parked a Markham Spartan fire engine partially on the left shoulder of northbound I-57 and partially in the furthest left-hand driving lane. Also in the early morning of March 9, 2019, Matthew J. Cage drank to intoxication at the bar Room 183. Cage left the bar and drove his vehicle with Andrew R. Lee as a passenger on I-57 in Markham in

the furthest left-hand lane. Cage drove his vehicle into the parked fire engine, and the impact resulted in Andrew's death.

On July 26, 2019, Michelle Lee filed a complaint on behalf of Andrew's estate. On February 20, 2020, this court granted in part the defendants' motion to dismiss. That order dismissed all failure-to-warn claims pursuant to the absolute immunity provided by section 3-104 of the Local Governmental and Governmental Entities Tort Immunity Act (TIA). *See* 745 ILCS 10/3-104.

On February 28, 2020, Michelle filed an amended complaint. The complaint contains eight counts against Woods individually and against Markham in *respondeat superior*. The first four counts are directed against Woods under the Survival Act, 755 ILCS 5/27-6, and the Wrongful Death Act, 740 ILCS 180/0.01 – 2.2, and are separately pleaded in simple negligence as well as in willful and wanton conduct. The four counts against Markham mirror those against Woods. The negligence counts claim that Woods breached his duty of care to Andrew by failing to: (a) take evasive maneuvers to avoid the collision he was causing; (b) provide adequate notice to other vehicles approaching the engine's location; and (c) position the engine safely with regard to moving traffic. The willful and wanton counts claim that Woods failed to: (a) activate emergency vehicle lighting or sirens to provide notice to other vehicles; (b) provide adequate notice to approaching vehicles; and (c) position the engine safely on the left shoulder. The willful and wanton count against Markham additionally claims that it failed to supervise Woods properly to ensure that he would not endanger persons in other vehicles.

On April 30, 2020, the defendants filed a second motion to dismiss, arguing that the amended complaint merely reworded what remain failure-to-warn claims from which they are immunized by section 3-104. The plaintiffs responded, arguing the amended complaint alleges that, by parking the engine partially in the traffic lane, Woods' conduct arises outside the

scope of section 3-104. The defendants replied. This court has carefully reviewed the parties' submissions.

Argument

The central issue in this continuing dispute is whether TIA section 3-104 immunizes the defendants against the latest negligence and willful and wanton claims in Michelle's amended complaint. Section 3-104 explicitly provides that:

Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to initially provide regulatory traffic control devices, stop signs, yield right-of-way signs, speed restriction signs, distinctive roadway markings or any other traffic regulating or warning sign, device or marking, signs, overhead lights, traffic separating or restraining devices or barriers.

745 ILCS 10/3-104. The language of section 3-104 is unconditional. *See West v. Kirkham*, 147 Ill. 2d 1, 6-7 (1992). A municipality cannot be liable for failing initially to provide traffic control devices, even if the municipality knew of a dangerous condition, was negligent or willful and wanton, and that its negligence proximately caused a plaintiff's injuries. *See id.*

Section 3-104 applies to failures to provide any particular type of device, even if others exist. *See Sexton v. City of Chicago*, 2012 IL App (1st) 100010, ¶ 62; *West*, 147 Ill. 2d at 10; *Wood v. Village of Grayslake*, 229 Ill. App. 3d 343, 353 (2d Dist. 1992). Section 3-104 also applies even if the Manual on Uniform Traffic Control Devices, 625 ILCS 5/11-304, would otherwise require a device or warning. *Sexton*, 2012 IL App (1st) 100010, ¶ 77; *Fitt v. City of Mattoon*, 213 Ill. App. 3d 472, 481 (4th Dist. 1991); *Ramirez v. Village of River Grove*, 266 Ill. App. 3d 930, 933 (1st Dist. 1994); *Boub v. Township of Wayne*, 291 Ill. App. 3d 713, 725 (2d Dist. 1997), *aff'd on other grounds* 183 Ill. 2d 520 (1983). Finally, section 3-104 cannot be circumvented by the argument

that a local public entity should have closed a road or not allowed motorists to travel on it. *See Gresham v. Kirby*, 229 Ill. App. 3d 952, 958 (4th Dist. 1992).

This body of consistent case law leads to the inexorable conclusion that section 3-104 immunizes the defendants from the amended complaint's iterative failure-to-warn claims. Specifically, paragraphs 15(b) in counts one, two, five, and six claim that the defendants failed "to provide adequate notice to motor vehicles. . . ." Similarly, paragraphs 18(a) in counts three, four, seven, and eight claim that the defendants failed "to activate emergency vehicle lighting or sirens in order to provide notice to motor vehicles," while paragraphs 18(b) in the same counts claim that the defendants "failed to provide adequate notice to vehicles"

In the context of the amended complaint, there is no other possible meaning of the phrases "to provide notice" or "to provide adequate notice" other than "to warn." Such notice or warning can come in various ways, each of which is immunized by section 3-104. First, notice could have been provided by emergency lights and sirens, the purpose of which, "is to warn pedestrians and other drivers of the danger present so that they may proceed with caution to avoid any accidents." *Nolan v. Elliott*, 179 Ill. App. 3d 1077, 1082 (2d Dist. 1989) (citing *Kirshenbaum v. City of Chicago*, 43 Ill. App. 3d 529, 532-33 (1st Dist. 1976), citing, in turn, Ill. Rev. Stat. 1987, ch. 95 1/2, ¶ 12 – 601(b)). Given the recognized purpose of emergency lights and sirens, section 3-104 immunizes Woods' failure to operate such equipment on the engine to warn other drivers such as Cage.

Second, a warning could have been provided by a flagger located sufficiently distant from the parked engine. Such an argument has been made before, however, and has been rejected as within the scope of section 3-104. *See Jefferson v. City of Chicago*, 269 Ill. App. 3d 672, 677-78 (1st Dist. 1993) (section 3-104 immunizes municipality for failing to provide flagger at construction site). Third, Markham could have provided notice of

the engine by installing a barricade or some other traffic-control device. This argument, too, has been made before and rejected. *See Castorena v. Browning-Ferris Indus.*, 237 Ill. App. 3d 702, 704 (2d Dist. 1992) (section 3-104 immunizes municipality's failure to place traffic control device to warn of private dumpster placed on public roadway); *see also Long v. Soderquist*, 126 Ill. App. 3d 1059, 1064-65 (2d Dist. 1984) (section 3-104 immunity extends to officer's failure to light flares, direct traffic, or warn oncoming vehicles after seeing two cars stopped partially on highway).

Other claims in Michelle's amended complaint fall outside the scope of section 3-104. Specifically, paragraphs 15(a) in each count charge Woods with failing to take evasive maneuvers to avoid the collision. This claim is difficult to understand given that Woods was not driving the engine at the time Cage collided with it; nonetheless, taking evasive driving maneuvers has nothing to do with failing to warn. Similarly, paragraphs 15(c) claim that Woods negligently parked the engine in a driving lane; that, too, has nothing to do with failing to warn. Paragraphs 18(c) take the claim of parking in the driving lane to the willful and wanton level, and, it too, is outside the scope of section 3-104. Finally, paragraphs 18(d) against Markham charge that it failed to supervise Woods properly, a claim that has nothing to do with failing to warn. In sum, paragraphs 15(a), 15(c), 18(c), and 18(d) of the amended complaint fall outside the scope of immunity provided in section 3-104.

Conclusion

For the reasons stated above,

It is ordered that:

1. The defendants' motion is granted in part and denied in part;

2. The defendants' motion is granted as to paragraphs 15(b), 18(a), and 18(b) against all defendants in all counts¹ and are dismissed with prejudice;
3. Pursuant to Illinois Supreme Court Rule 304(a) there exists no just reason for delaying either enforcement or appeal or both of this court's order as to the claims identified immediately above; and
4. The defendants' motion is denied as to the remaining claims of the amended complaint.

John H. Ehrlich, Circuit Court Judge

¹ The defendants' prayer for relief seeks dismissal of counts 6 through 13 in their entirety. Those are the counts directed against Woods and Markham in the original, not amended, complaint.