
LEGAL UPDATE

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IOWA SUPREME COURT DECISION — THE PUBLIC-DUTY DOCTRINE AND THE STATE-OF-THE-ART DEFENSE

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Breese v. City of Burlington

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No. 19-0484

www.iowacourts.gov/courtcases/9758/embed/SupremeCourtOpinion

Facts and Procedural Background. In August of 2015, Ms. Breese and her daughter were riding their bicycles in Dankwardt Park in Burlington, Iowa. Without realizing they were doing so, Ms. Breese and her daughter began riding on top of a sewer box that was directly connected to the pathway. The sewer box was flush with the pathway at the point of connection.

After riding on top of the sewer box for approximately five minutes, Ms. Breese noticed the sewer box was approximately 10 feet off the ground. Ms. Breese also noticed there were low-hanging tree branches in front of her and her daughter, and began to turn their bicycles around. Ms. Breese subsequently struck a tree branch, lost control of her bicycle, and fell from the sewer box roughly 10 feet to the ground below. Ms. Breese sustained serious injuries in the fall.

Ms. Breese subsequently sued the City of Burlington (City), alleging the City was negligent for failing to: (1) warn users the sewer box was not a part of the pathway system, (2) warn users the path reached hazardous heights and had no safe turnaround points, and (3) place guardrails along the sewer box. The City filed an answer denying liability and asserting various affirmative defenses and moved for summary judgment. The City argued the public-duty doctrine precluded Ms. Breese's case and the City was immune from liability pursuant to the state-of-the-art defense.

The statement of facts attached to the City's summary judgment motion contained one affidavit indicating the City never designated the sewer box as a hiking trail or modified the sewer box and a second affidavit indicating the sewer box was constructed in the 1930s according to the engineering and safety standards of the time.

Ms. Breese's response to the City's statement of facts contained evidence indicating the City upgraded or improved the sewer box at some time between 1980 and 1992, and the City failed to comply with applicable engineering and safety standards in effect from 1980 to 1992.

The district court granted the City's summary judgment motion. The district court found the public-duty doctrine barred Ms. Breese's claims. The district court also found the City was immune to Ms. Breese's claims pursuant to the state-of-the-art defense. The district court reasoned Ms. Breese had failed to demonstrate that the City failed to adhere to engineering and safety standards in place in the 1930s. In

addition, the district court reasoned that connecting the sewer box to the pathway did not constitute a “reconstruction.” Ms. Breese appealed to the Iowa Supreme Court (Court).

Issues. Whether the district court erred in granting the City’s summary judgment motion based on the public-duty doctrine or the state-of-the-art defense.

Holdings. The Court reversed and remanded the district court’s decision, finding the district court erred in granting the City’s summary judgment motion based on the public-duty doctrine and the state-of-the-art defense.

Analysis.

Public-Duty Doctrine. The Court analyzed the interrelationship between the public-duty doctrine and the Iowa Municipal Tort Claims Act (IMTCA). The public-duty doctrine generally does not allow individuals to sue the government for breach of a duty owed to the public at large. Pursuant to the public-duty doctrine, “if a duty is owed to the public generally, there is no liability to an individual member of that group.” *Johnson v. Humboldt County*, 913 N.W.2d 256, 260 (Iowa 2018).

Ms. Breese cited the IMTCA in arguing the City was negligent and should be held liable for its negligence. The IMTCA provides “[e]xcept as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties” Iowa Code §670.2(1). However, the Court stated the IMTCA does not modify the public-duty doctrine because “the public-duty doctrine is not rooted in government immunity.” The Court explained that the IMTCA provides governmental entities with immunity against the breach of what would otherwise be an enforceable duty, while the public-duty doctrine is focused on whether the governmental entity owed an enforceable duty.

The Court then examined its prior public-duty doctrine cases where the Court has generally applied the public-duty doctrine when there was no claim of a special relationship between the plaintiff and the governmental entity. In this case, the Court elected to adopt a new standard to determine whether to apply the public-duty doctrine. The new standard is based on the distinction between misfeasance and nonfeasance. In the case of misfeasance, a governmental entity performs some affirmative act and does so negligently. In the case of nonfeasance, a governmental entity fails to act and such failure allows harm to occur. The Court will now apply the public-duty doctrine to protect a governmental entity from liability only in cases of nonfeasance.

The Court held the district court erred in granting the City’s summary judgment motion based on the public-duty doctrine because the public-duty doctrine did not apply to the facts of this case. The City constructed the sewer box and the pathway and connected them to each other. The Court stated a jury could find the City was affirmatively negligent, and thus the public-duty doctrine would not apply, because the City connected the sewer box to the pathway in a way that made it seem like the sewer box was part of the pathway and subsequently failed to warn pedestrians the sewer box was not a part of the pathway and did not take steps to make the sewer box a safe part of the pathway by adding guardrails.

State-of-the-Art Defense. The state-of-the-art defense, codified at Iowa Code section 670.4(1)(h), provides a city with immunity from claims of negligent design or construction of facilities or public improvements that are built according to accepted standards at the time of construction and claims based on a city’s failure to upgrade those facilities or public improvements to meet new standards. For purposes of the state-of-the-art defense, a “public improvement” includes sewers.

The Court noted its past state-of-the-art defense cases placed the burden on the plaintiff to establish that a city failed to construct or reconstruct a facility or public improvement in accordance with accepted standards. The Court conceded other types of immunity place the burden on the party invoking the defense to prove its actions are entitled to immunity. The Court stated that placing the burden on the plaintiff in a state-of-the-art defense case is illogical because a city will normally be the party that has access to information regarding when the improvement was made. Accordingly, the Court overruled its

past cases that placed the burden on the plaintiff to establish that a city failed to construct or reconstruct a facility or public improvement in accordance with accepted standards and instead “place[d] the burden on the party invoking the state-of-the-art defense to plead and prove it as an affirmative defense going forward.”

The Court found that the City’s connection of the pathway and sewer box between 1980 and 1992 “fundamentally altered the sewer box by connecting it to the pathway in Dankwardt Park.” As a result, because of the standards for granting a motion for summary judgment, the Court indicated it must analyze whether there was a “genuine issue of material fact as to whether the City met the engineering and safety standards in existence between 1980 and 1992 to determine whether” the district court erred in granting the City’s summary judgment motion based on the state-of-the-art defense.

The Court held that, in this case, the district court erred in granting the City’s summary judgment motion based on the state-of-the-art defense. The Court stated that, even considering this case under the prior framework in which the burden was on Ms. Breese to show that the City failed to construct the sewer box in accordance with accepted standards, Ms. Breese provided enough evidence to survive the City’s summary judgment motion by showing a genuine issue of material fact as to whether the City met the engineering and safety standards in existence between 1980 and 1992. Ms. Breese’s expert witness produced reports indicating fencing should be used on pathways where safety is a concern, and the City could have taken specific steps to prevent this kind of incident, including installing guardrails and warning signs.

Concurrence. Justice Appel filed a special concurrence in which he questioned the ongoing validity of the public-duty doctrine. Justice Appel argued that the public-duty doctrine was a variant of sovereign immunity, which the IMTCA replaced.

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