

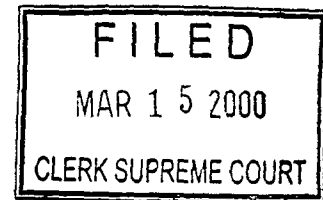
IN THE COURT OF APPEALS OF IOWA

No. 1999-389 (9-642) / 98-2201
Filed March 15, 2000

**THELMA NADINE ALLEN,
Plaintiff-Appellant,**

vs.

**JAMES L. ALLEN and SHERRILEE R.
ALLEN,
Defendants-Appellees.**



Appeal from Iowa District Court for Woodbury County, Richard V. Vipond,
Judge.

Plaintiff appeals the district court ruling granting summary judgment in favor of defendants on her personal injury claim resulting from a fall on the parkway next to defendant's property. Plaintiff contends summary judgment was inappropriate in light of city ordinances which impose on defendants a duty to maintain the parkway. **AFFIRMED.**

Robert B. Deck of Deck & Deck Law Offices, Sioux City, for appellant.

Daniel B. Shuck and Jeff W. Wright of Heidman, Redmond, Fredregill,
Patterson, Plaza & Dykstra, L.L.P., Sioux City, for appellees.

Considered by Huitink, P.J., and Streit and Miller, J.J.

PER CURIAM

Plaintiff-appellant, Thelma Allen, tripped on a depression located in the area between the sidewalk and curb in front of her son's home in Sioux City. Thelma filed suit against him and his wife to recover for the personal injuries she sustained from the fall. They moved for summary judgment, contending as a matter of law they were not liable in tort for Thelma's injuries since she did not fall on their property. The district court agreed and granted summary judgment in their favor. The court found in part that the municipal ordinances cited by Thelma to support her claim did not expressly impose tort liability on the Allens for such injuries, a necessary predicate for her suit.

Thelma appeals the summary judgment. We review the district court's grant of summary judgment for correction of errors at law. *In re Estate of Renwanz*, 561 N.W.2d 43, 44 (Iowa 1997). We will uphold a summary judgment when the moving party shows there are no genuine issues of material fact and he is entitled to judgment as a matter of law. *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995).

Thelma points out that city ordinances drafted consistent with Iowa Code section 364.12(2) (1995), impose on landowners such as the Allens a duty to maintain the parkway abutting their property free from obstructions and depressions. Thelma acknowledges that existing case law holds landowners are not liable in tort for breach of such duties unless liability is expressly imposed by statute or ordinance. See *Peffer v. City of Des Moines*, 299 N.W.2d 675, 677 (Iowa 1980); *Busselle v. Doubleday*, 486 N.W.2d 45 (Iowa App. 1992). She requests that *Peffer* and *Busselle* be reconsidered. We decline to reconsider or

modify *Busselle*. The supreme court generally prefers that if its previous holdings are to be overruled, it do so. *State v. Eichler*, 248 Iowa 1267, 1270, 83 N.W.2d 576, 578 (Iowa 1957).

Second, Thelma argues that the Sioux City ordinances do expressly impose liability. She points to the language in one ordinance that owners have a duty "to keep the parkway free of . . . depressions which might be injurious to the general public" and argues this demonstrates an intention by the city to make landowners liable to the traveling public for breach of this duty. We disagree. There is no express imposition of liability in the language of the ordinance. Thelma also points to a separate ordinance that provides persons violating a provision of the municipal code chapter in question are guilty of a municipal infraction. She asserts the violation of a criminal statute always results in liability of the defendant to the injured party. Iowa Code section 364.22 provides that municipal infractions are civil offenses, not criminal. This claim is without merit.

Since the language of the Sioux City ordinances does not expressly impose liability in tort for violation of the ordinances, our resolution of this case is controlled by *Peppers v. City of Des Moines*, 299 N.W.2d at 677, and *Busselle v. Doubleday*, 486 N.W.2d at 46-47. We affirm the district court's grant of summary judgment.

AFFIRMED.