

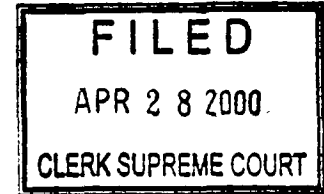
IN THE COURT OF APPEALS OF IOWA

No. 0-060 / 99-1187
Filed April 28, 2000

CAROLYN HUGHES,
Plaintiff-Appellant,

vs.

CITY OF MT. VERNON, IOWA,
Defendant-Appellee.



Appeal from the Iowa District Court for Linn County, David M. Remley,
Judge.

Plaintiff appeals the district court order granting summary judgment in
favor of defendant. **REVERSED AND REMANDED.**

Pete Leehey of Wertz & Leehey, Cedar Rapids, for appellant.

Terry J. Abernathy and Thad J. Collins of Pickens, Barnes & Abernathy,
Cedar Rapids, for appellee.

Heard by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

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MAHAN, P.J.

Plaintiff Carolyn Hughes appeals the district court order granting summary judgment in favor of defendant. Hughes contends the district court erred in (1) denying her motion to continue or hold in abeyance to allow her time to complete discovery and develop adequate information to resist the defendant's motion for summary judgment, and (2) determining there was no genuine issue of material fact and granting the defendant City of Mount Vernon's motion for summary judgment. We reverse and remand to the district court.

Carolyn Hughes is employed with the University of Iowa and rides the University of Iowa vanpool to and from work each day. Hughes parks her car in a city parking lot owned by the City of Mount Vernon in order to be picked up and dropped off by the vanpool.

At approximately 5:45 p.m. on November 20, 1996, the University of Iowa van Hughes was riding in arrived at the city parking lot. Hughes noted "the lot looked clean and clear" before stepping out. As Hughes stepped from the van, her foot slipped on what she claimed to be a spot of black ice. She fell backwards against the van and then forward onto her hands and knees. After that Hughes made her way to her own vehicle and then headed home. Hughes contends although it appeared the snow had been cleared in the parking lot, she did not see any evidence of the lot having been sanded.

Hughes filed a lawsuit alleging the City of Mount Vernon was negligent in failing to remove the snow and ice from the parking lot. The City of Mount Vernon filed a motion for summary judgment claiming immunity. The City

supported the motion with evidence it did have a snow removal policy and it's apparent compliance with this policy on November 20, 1996. Hughes claims if icy conditions exist, the City is required to apply sand and there was no evidence the City did this in this particular lot. Hughes filed a motion to continue or hold in abeyance any ruling on the City's motion for summary judgment. Specifically, she requested additional time to complete discovery.

The City of Mount Vernon has a snow removal policy that sets out the requirements the City must follow. This policy is divided into three categories depending on the amount of snowfall the City receives. On November 20, 1996, Mount Vernon received 0.25 inches of snow. The snow removal category Mount Vernon applied on this date was the one for 0 – 0.5 inches of snow. Mount Vernon's snow removal policy sets out the following requirements for this category:

If icy conditions exist sanding only

Starting time 7:00 a.m.

Priority List:

1. 1st St. E & W, Lisbon Rd, 8th Ave. N, 5th Ave. N & S
2. Stop Signs, hills, curves
3. Emergency service parking lots
4. All city maintained sidewalks
5. City parking lots (if clear of cars)

The crews for the City began their work in compliance with the snow removal policy at 7:00 a.m. and spent a total of four man hours of time removing snow from all priority areas including the City owned parking lot at issue.

The district court denied Hughes's motion to continue or hold in abeyance based on its determination that this is an issue of government immunity which raises primarily legal not factual issues. Therefore, further discovery would not

~~serve to clarify any issues.~~ The district court granted summary judgment in favor of the City of Mount Vernon. Hughes appeals.

I. Standard of Review. A motion for summary judgment is reviewed for correction of errors at law. Iowa R. Civ. P. 237(c). We will uphold a summary judgment order when the movant shows there are no genuine issues of material fact and they are entitled to judgment as a matter of law. *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). We review the record in the light most favorable to the nonmoving party. *Id.*; *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994). The moving party has the burden to establish there are no material facts in dispute. *Schluerter v. Grinnell Mut. Reins. Co.*, 553 N.W.2d 614, 615 (Iowa App. 1996). However, the nonmoving party cannot rely on their pleadings if the motion for summary judgment is properly supported; they "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e); *Dudden v. Goodman*, 543 N.W.2d 624, 626 (Iowa App. 1995).

II. Immunity. The district court granted summary judgment in favor of the City of Mount Vernon on the basis of government immunity. Iowa Code section 668.10(2) grants a state or municipality immunity from liability for negligence if it can meet ~~three~~ requirements: (1) the snow or ice in question was on the highway, road, or street, and (2) the defendant established a policy or level of service for snow and ice removal, and (3) the city complied with that policy or level of service. *Humphries v. Trustees of the Methodist Episcopal Church*, 566 N.W. 2d 869, 872 (Iowa 1997). It is undisputed the parking lot in issue was

cleared of snow on November 20. However, Hughes contends there is a genuine issue as to whether the City complied with its snow removal policy and applied sand to the parking lot in which she fell. The City presented evidence it did use sand and salt that day, but there was no evidence presented as to whether there was any applied to the parking lot at issue. The fact in dispute is whether sand was applied to this particular parking lot and, therefore, there exists a genuine issue with regard to that fact. Following the development of this fact, summary judgment may be proper. However, that fact has not been developed. Therefore, summary judgment should not have been granted in favor of the defendant.

We reverse the district court's grant of summary judgment in defendant's favor.

REVERSED AND REMANDED.

Vaitheswaran, J., concurs; Zimmer, J., dissents.

ZIMMER, J. (dissenting)

I respectfully dissent. I believe the proof submitted with the motion for summary judgment supports the trial court's conclusion that the city established the three required elements for statutory immunity provided by Iowa Code section 668.10(2). Approximately .25 inches of snow fell on the City of Mt. Vernon on November 20, 1996. According to the city's affidavits, the city crews responded in accordance with the city's snow removal policy. Seven tons of sand, about a half-ton of salt, and calcium chloride were used over the course of four hours on November 20. According to plaintiff's own statements, when she arrived at the city's parking lot after work around 5:45 p.m. on November 20, the lot looked clean and clear and it appeared snow had been cleared from the parking lot. Hughes did not observe any ice before she fell. I do not believe her claim that the lot was icy and she saw no evidence of sanding is sufficient to defeat the city's claim of immunity under Iowa Code section 668.10(2).

I would affirm the district court's grant of summary judgment in defendant's favor.