

J. Cummins, Esq.

**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

DEANNE BROWN and	: NO. 8953 CIVIL 2014
GREGORY BROWN, her husband,	:
	:
Plaintiffs	:
	:
vs.	:
	:
KATHERINE RUSSAW and	:
EMERALD LAKES ASSOCIATION,	: DEFENDANT
	: EMERALD LAKE ASSOCIATION'S
Defendants	: MOTION FOR SUMMARY JUDGMENT

OPINION

This matter is before the Court on Defendant Emerald Lakes Association's ("Defendant Association") Motion for Summary Judgment. Plaintiff, Deanne Brown ("Plaintiff") was injured in an automobile accident while travelling on Sullivan Trail Road when she was struck at the intersection with Clearview Road by a vehicle driven by Defendant Katherine Russaw ("Russaw"). Sullivan Trail Road is a state road maintained by the Pennsylvania Department of Transportation (PennDOT). Clearview Road is a private road maintained by the Defendant Association. Plaintiff and Russaw both live in the Defendant Association's community. Russaw was driving on Clearview Road when she failed to stop at the intersection with Sullivan Trail Road. All parties agreed that a stop sign was supposed to be at the intersection of Clearview with Sullivan Trail for traffic travelling on Clearview. The stop

sign was the responsibility of Defendant Association. The stop sign was missing at the time of the accident. Russaw had not previously travelled on Clearview and she rolled through the intersection without coming to a full stop, striking Plaintiff's vehicle. Defendant Association alleges there are no facts in dispute regarding constructive or actual notice of the missing stop sign and that it is entitled to judgment as a matter of law with dismissal from the suit.

Summary judgment can only be granted in cases where the right to judgment is clear and free from doubt. Toy v. Metro. Life Ins. Co., 593 Pa. 20, 928 A.2d 186 (2007). It is the burden of the moving party to establish that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. Id.; Pa. R.C.P. 1035.2. The record must be viewed in the light most favorable to the non-moving party with all doubts as to the existence of a genuine issue of material fact resolved in favor of the non-moving party. Toy, supra.

Plaintiff must be able to show actual or constructive notice of a defective condition, here a missing stop sign. To establish constructive notice, it is necessary to show that the defect existed for a period of time that it could have been discovered through reasonable care. Murray v. Siegal, 413 Pa. 23, 195 A.2d 790 (1963). Plaintiff must also be able to show a duty to erect, replace and/or maintain a stop sign at this intersection by Defendant Association.

First, we note Clearview Road is a private road, owned and maintained by Defendant Association. We also note that Defendant Association is a private community with over a thousand property owner members, miles of roads, other amenities, and is governed by a board of directors consisting of elected property owners within the community. The Association is not a public entity nor a municipal entity, although the community and roads are contained

within a local municipality. There is no duty for the local municipality or the state to maintain the roads in the community.

We do agree with Russaw and Plaintiff that there could be constructive, and perhaps actual notice of the missing stop sign on Clearview Road where it intersects with Sullivan Trail Road. It is a material fact in dispute which the jury could find existed. Russaw's husband was advised the stop sign was removed as a prank. All parties agreed the stop sign was not there at the time of the accident. PennDOT was not responsible for the sign. A local municipality was not responsible for the sign. The roads are regularly patrolled by security employed by the Defendant Association. It is possible the security patrols knew of the missing stop sign before the accident and failed to inform anyone. The security patrols also patrol the association roads numerous times a day, all day, such that they reasonably could have noticed the missing sign before the accident. The manager expected the roads to be patrolled every day to inspect signage. Whether or not the defect, here a missing sign, was apparent upon reasonable inspection, is a question of fact for the jury. *See Com. Dept. of Transp. v. Patton*, 546 Pa. 562, 686 A.2d 1302 (1997). Furthermore, there are issues of credibility at issue. Therefore, the matters cannot be dismissed for failure to show real or constructive notice.

However, Defendant Association has raised another issue: that it had no duty to maintain or to replace a stop sign on Clearview Road. It has cited cases generally involving municipalities and believes the same applies to a private landowner. The duties of a private community association with regard to stop signs do not appear to be addressed under the case law. Defendant Association has pointed to *Bruce v. Com. Dept. of Transp.*, 138 Pa. Cmwlth. 187, 588 A.2d 974 (1991), *Hough v. Com. Dept. of Transp.*, 155 Pa. Cmwlth. 162, 624 A.2d 780

(1993) and Bryson v. Solomon, 510 A.2d 377 (Pa. Cmwlth. 1986) in support of the proposition that a municipality has discretion of whether or not to erect traffic control devices and that there is no duty of a municipality to erect, maintain or replace a missing stop sign at an intersection.¹ Defendant Association is not a municipality. This fact is often noted in cases where homeowners are required to pay dues in addition to taxes for non-municipal services, and at municipal meetings when residents request municipalities to assist with private road repairs. However, we do find the above cases analogous and persuasive.

The Defendant Association is like a municipality in this instance when considering whether to erect traffic control devices. If a municipality has no obligation to erect, maintain or repair stop signs on its roads, then for the same reasons, a private road owner should likewise not have that obligation. Even though there is no provision under the Motor Vehicle Law stating as such, as there is with municipalities, these are private roads subject to use by owners and their guests. Owners of private roads certainly have discretion with how those roads are utilized and maintained arising out of private property rights. In fact, it follows that a private road owner has less duties concerning use and maintenance of its roads with regard to its own residents using them, because the residents actually own the roads and can control who uses them, how and when. By its very nature, use of private roads is discretionary. Plaintiff has cited no case law for the proposition that a private landowner would have a duty to erect, repair or replace stop signs on private roads. It appears no such duty exists, especially considering a public municipal entity has no such duty for public roads. As such, we agree that a private

¹ We acknowledge that the legislature set forth in 75 Pa. C.S.A. §6122 that a municipality has discretion not to erect traffic control devices.

association, which maintains its own private roads, is under no duty to erect traffic control signs, including stop signs, or to repair or replace them, even if they know they are missing.

Finally, we agree with Defendant Association that even in the absence of the stop sign, there are rules of the road for drivers to follow. *See* 75 Pa. C.S.A. §3321(a) (concerning right-of-way at an intersection). Such rules are contemplated when there are no traffic control devices. Interestingly, there was no allegation here that the lack of a stop sign was either confusing or in some way contradictory to the usual rules of the road when approaching an intersection with regard to yielding the right-of-way. In other words, there are no facts set forth in which Plaintiff could recover under the law due to the lack of a stop sign, whether or not a duty existed for such sign, as it appears Russaw failed to follow the rules of the right-of-way at an intersection where no signage exists. For all of these reasons, we will grant Defendant Association's Motion for Summary Judgment.


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ORDER

AND NOW, this 10th day of May, 2017, Defendant Emerald Lake Association's Motion for Summary Judgment is GRANTED. Defendant, Emerald Lakes Association is DISMISSED from this action.

BY THE COURT:



DAVID J. WILLIAMSON, J.

cc: Kelly J. Lenahan, Esq.
Daniel E. Cummins, Esq.
Edward A. Monsky, Esq.
Prothonotary

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