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LIABILITY - SOUTH DAKOTA

Patitucci v. City of Hill City

Supreme Court of South Dakota - August 14, 2013 - N.W.2d - 2013 S.D. 62

Pedestrian brought negligence action against city and landowner, whose land abutted public sidewalk, after pedestrian was injured while walking on sidewalk.

The Supreme Court, Zinter of South Dakota held that:

- City had sufficient control over sidewalk within city boundary, so as to have duty of care for designing, constructing, maintaining, and repairing sidewalk, but
- There was no evidence that landowner made special use of sidewalk, as would create duty on part of landowner to maintain sidewalk in reasonably safe condition for pedestrian.

Under common law, landowners abutting public sidewalks generally do not owe a duty to keep them in a reasonably safe condition, but an exception exists when the abutting owner creates or maintains an excavation or other artificial condition on the sidewalk.

Under the “special use doctrine,” if an abutting landowner makes special use of the sidewalk, he or she owes a duty to maintain it in a reasonably safe condition for pedestrians lawfully using it, and must exercise reasonable care to guard the public from injury. If the abutter does not, he or she becomes liable to any persons injured as a proximate result of his or her negligence.

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