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Cebron v. Tuncoglu

Supreme Court, Appellate Division, Second Department, New York - August 28, 2013 - N.Y.S.2d -109 A.D.3d 631 - 2013 N.Y. Slip Op. 05729

In two related actions, school bus driver and monitor on that bus brought action against town, driver and owner of colliding vehicle, and owners of property that was alleged source of icy road conditions, seeking to recover damages for personal injuries allegedly sustained in motor vehicle accident.

The Supreme Court, Appellate Division, held that:

- Fact issue existed as to whether water from property owners' land contributed to icy condition;
- Driver and owner of colliding vehicle established prima facie entitlement to judgment as matter of law; and
- Fact issues existed as to whether town contributed to icy condition.

Private landowner may be liable for injuries sustained in a car accident that is proximately caused by an ice condition occurring on an abutting public roadway, where that ice condition was caused and created by the artificial diversion of naturally flowing water from the private landowner's property onto the public roadway.

Driver and owner of colliding vehicle, moving for summary judgment in personal injury suit of school bus monitor, seeking to recover damages for personal injuries allegedly sustained in motor vehicle accident, established prima facie entitlement to judgment as matter of law by providing competent medical evidence that monitor's alleged lumbar injuries did not constitute serious injury within meaning of no-fault automobile insurance law and pointing to monitor's own testimony that accident caused her to lose only about one week of work.

Genuine issues of material fact existed as to whether town affirmatively created icy road condition through its own negligence, and whether town's negligence at time road was repaired immediately resulted in existence of the hazardous condition, precluding summary judgment in school bus driver's and monitor's suit against town.

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