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LIABILITY - MICHIGAN

Buhl v. City of Oak Park

Supreme Court of Michigan - June 9, 2021 - N.W.2d - 2021 WL 2350031

Pedestrian, who fractured her ankle when she fell attempting to avoid a crack in sidewalk, brought action against city under the sidewalk exception to governmental immunity.

The Circuit Court granted summary disposition in favor of city, based on statutory amendment that allowed municipality to assert open and obvious danger doctrine as a defense. Pedestrian appealed, and the Court of Appeals affirmed. Pedestrian appealed.

The Supreme Court held that amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, could not be applied retroactively to pedestrian's claim.

Nothing in the plain language of amended statute granting municipalities the right to raise the open and obvious danger doctrine as a defense in premises-liability cases suggested that it was intended to apply retroactively, and thus, factor asking whether there is specific language in the statute that indicates whether it should be applied retroactively did not support retroactive application of amended statute to pedestrian's claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment; amendment was given immediate effect without further elaboration, and amendment made no mention of whether it applied to a cause of action that had already accrued before its effective date.

Factor asking whether retroactive application of statute or amendment would create new obligations, impose new duties, or attach new disabilities with respect to transactions already past, did not favor retroactive application of amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, to pedestrian's claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment; although application of amended statute would not automatically extinguish pedestrian's claim, subsequent application of open and obvious danger doctrine would result in dismissal of her lawsuit because retroactive application would relieve city of legal duty it owed to her when injury occurred.

Factor favoring retroactive application of statutes that are merely remedial or procedural did not favor retroactive application of amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, to pedestrian's claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment; retroactive application of amendment would relieve city of duty it owed to maintain its sidewalk in reasonable repair.

Amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, could not be applied retroactively to pedestrian's claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment, and thus, city could not avail itself of the open and obvious danger doctrine as a defense to

pedestrian's negligence claim; nothing in the plain language of amended statute suggested that it was intended to apply retroactively, and retroactive application would relieve city of a legal duty it owed to pedestrian when injury happened.

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