IN THE SUPREME COURT OF ILLINOIS
No. 121536

KATHY CORBETT, Plaintiff-Appellee, v. THE COUNTY OF LAKE, Defendant, and THE CITY OF HIGHLAND PARK, Defendant-Appellant.	Appeal from the Second District Appellate Court, Elgin, Illinois Appellate Court No. 2-16-0035 There heard on appeal from the Nineteenth Judicial Circuit Court, Lake County, Illinois Circuit Court No.: 14 L 493 The Honorable Christopher C. Stark, Judge Presiding

BRIEF OF DEFENDANT-APPELLANT THE CITY OF HIGHLAND PARK

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

D. The California Court of Appeal Decisions Interpreting an Analogous Statute Support an Interpretation of "Trail" that Immunizes the City of Highland Park.

INTRODUCTION

This action was brought to recover damages arising out of personal injuries the Plaintiff sustained when she fell off her bicycle while riding on the Skokie Valley Bike Path within the City of Highland Park. In her Complaint at Law, the Plaintiff alleged that her injuries were proximately caused by the willful and wanton acts or omissions of the City of Highland Park. The Circuit Court granted summary judgment in favor of the City of Highland Park. Plaintiff appealed to the Illinois Appellate Court, Second District, which reversed the judgment of the Circuit Court. The City of Highland Park petitioned this Court for leave to appeal, which was granted on January 25, 2017. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

Whether the Circuit Court properly granted the City of Highland Park's motion for summary judgment on the basis that it was entitled to absolute immunity from liability pursuant to Section 3-107(b) of the Local Governmental and Governmental Employees Tort Immunity Act.

Whether the Skokie Valley Bike Path is a "trail" as contemplated by Section 3-107(b) of the Local Governmental and Governmental Employees Tort Immunity Act.

STATEMENT OF JURISDICTION

The Circuit Court granted motions for summary judgment by the County of Lake and the City of Highland Park on December 16, 2015. C1023, A005. Plaintiff filed a Notice of Appeal from the Circuit Court to the Illinois Appellate Court, Second District on January 4, 2016 pursuant to Illinois Supreme Court Rules 301 and 303 requesting reversal of the judgments in favor of the County of Lake and the City of Highland Park. C1025, A006. On September 23, 2016, the Illinois Appellate Court, Second District issued an opinion and order affirming the Circuit Court's summary judgment in favor of the County of Lake and reversing the Circuit Court's summary judgment in favor of the City of Highland Park. A012. The City of Highland Park petitioned this Court for leave to appeal pursuant to Illinois Supreme Court Rule 315 on October 28, 2016. A020. On January 25, 2017, this Court accepted the City of Highland Park's petition for leave to appeal. A053. This Court has jurisdiction to hear this appeal pursuant to Illinois Supreme Court Rule 315.

STATUTE INVOLVED

> "Neither a local public entity nor a public employee is liable for an injury caused by a condition of: (b) Any hiking, riding, fishing or hunting trail." 745 ILCS 10/3-107(b).

STATEMENT OF FACTS

I. THE PARTIES

Plaintiff is a resident of Wilmette, Illinois and an avid cyclist. C497; C633.

City of Highland Park is an Illinois Municipal Corporation and a local public entity. C474; C478.

II. THE OCCURRENCE

On August 21, 2013, Plaintiff was riding her bicycle on the Skokie Valley Bike Path one-tenth of a mile north of Old Deerfield Road with more than five (5) other riders when she had an accident. C528-C534, C866. Plaintiff was familiar with the Skokie Valley Bike Path and had ridden the stretch of path where the accident occurred probably more than fifty (50) times. C507. She was aware of the defects that caused her accident and had seen them several weeks to a month prior to the accident. C520. She never notified anyone of the defects. C520.

The accident occurred when one of the riders in front of Plaintiff hit a bump and crashed. C539. Plaintiff did not have anywhere to go and ended up riding over the crashed rider and his bicycle and flying up in the air and crashing. C539.

III. THE NATURE OF THE SKOKIE VALLEY BIKE PATH

During discovery in this action, Plaintiff and three (3) of the riders who were in her group at the time of her accident gave deposition testimony. They testified as follows concerning the nature of the Skokie Valley Bike Path.

A. Deposition Testimony of the Plaintiff

The Skokie Valley Bike Path is a bicycle path used for recreational purposes. C527. Plaintiff and her fellow riders call the Skokie Valley Bike Path the "bunny trail" because "they have a lot of bunnies on it." C536. The specific location of her accident, just north of Old Deerfield Road, is surrounded by shrubs, wild grasses, and trees. C527-C528, C536. The area is also separated from residences, commercial businesses, dedicated parks, and set back from the highway. C528.

B. Deposition Testimony of Hasan Syed

Syed was in the group riding with Plaintiff on the date of her accident. C732. Prior to the date of Plaintiff's accident, he had ridden the Skokie Valley Bike Path approximately fifty-six (56) to seventy (70) times. C727. The Skokie Valley Bike Path was used for recreation – to enjoy your ride slow and to ride for fun. C731. It is seven (7) to ten (10) feet wide. C731. There are shrubs on either side of the path, which is separated from commercial businesses and residences, and set back from the highway. C730-C731. The section of the Skokie Valley Bike Path where the accident occurred is commonly known as the "bunny path" because there are a lot of bunnies running around the area. C752.

C. Deposition Testimony of John Stevens

Stevens was in the riding group with the Plaintiff on the date of the accident. C800. The path they were riding on the day of the accident was asphalt, about six (6) feet wide, with a yellow line in the middle. C803. It is lined by some type of growth most of the way, whether hedges, bushes, or wild grass. C803. The path is apart from commercial businesses; separate from any outside traffic other than bikes, walkers and runners, and; not connected to any particular park. C804.

D. Deposition Testimony of Yves Roubaud

Roubaud was in the group riding with the Plaintiff at the time of her accident and recalls her accident. C670-C671. The stretch of path where the accident occurred is a bicycle path used primarily by bicycle riders for recreational purposes. C669. He has seen some people walking on the path, but not many. C669. It is separated from residences and commercial businesses, and is set back from the highway. C669. There are trees on either side of the path. C666.

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In response to the City of Highland Park's motion for summary judgment, Plaintiff submitted an affidavit further describing the nature of the Skokie Valley Bike Path as follows:

The Skokie Valley Bike Path does not go through a forest or mountainous region. C866. Highway 41 is less than one block east of the path. C867.

Railroad tracks are less than one block west of the path. C867. In the particular area where the occurrence happened, there were large bushes and grass present, but no trees. C866. Large utility poles run alongside the entire path with multiple powerlines overhead. C867. In several areas along the path, commercial and industrial businesses stack materials such as pipes and concrete blocks right up against the path. C867. Several commercial and industrial buildings and businesses abut the path to both the east and west in certain locations. C866. The path intersects with Old Deerfield Road, a busy city street. C867.

ARGUMENT

The court reviews a trial court's decision on a motion for summary judgment *de novo*. *Coleman v. E. Joliet Fire Prot. Dist.*, 2016 IL 117952, ¶ 20.

Questions of statutory interpretation are reviewed *de novo*. *Ries v. City of Chicago,* 242 Ill. 2d 205, 216 (Ill. 2011).

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This appeal turns entirely upon the single question of whether the Skokie Valley Bike Path is a "trail" as contemplated by Section 3-107(b) of the Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act."), which states:

> "Neither a local public entity nor a public employee is liable for an injury caused by a condition of: (b) Any hiking, riding, fishing or hunting trail." 745 ILCS 10/3-107(b).

The word "trail" is not defined in the Tort Immunity Act. The parties do not contest that (1) the City of Highland Park is a local public entity and (2) Plaintiff's injury was caused by a condition of the Skokie Valley Bike Path. Thus, if the Skokie Valley Bike Path is a "trail" as contemplated by Section 3-107(b), the Circuit Court was correct to grant the City of Highland Park's motion for summary judgment, and the Appellate Court's reversal of that judgment was erroneous.

"In interpreting a provision of the Tort Immunity Act, as with any statute, [the Court's] primary goal is to ascertain and give effect to the intention of the legislature." *Moore v. Chicago Park Dist.*, 2012 IL 112788, ¶ 9. The

Court first seeks that intention "from the plain language used in the statute..." *Id.* Only when a statute is ambiguous does the Court "resort to aids of statutory construction." *People v. Diggins*, 235 Ill. 2d 48, 55 (Ill. 2009).

Here, it remains unnecessary for the Court to resort to aids of statutory construction because the plain language of Section 3-107(b) indicates that the legislature intended to create an absolute immunity to local public entities for injuries caused by a condition of the Skokie Valley Bike Path. Should the Court disagree that Section 3-107(b) unambiguously immunizes the City of Highland Park in this instance, an analysis using the traditional aids of statutory construction leads inexorably to the same conclusion.

I. THE PLAIN LANGUAGE OF SECTION 3-107(b) AFFORDS THE CITY OF HIGHLAND PARK ABSOLUTE IMMUNITY.

As here, where a term is not defined by statute, the Court must "assume that the legislature intended the term to have its ordinary and popularly understood meaning." *People v. Beachem*, 229 Ill. 2d 237, 244 (Ill. 2008). In this case, the Court must ask whether the Skokie Valley Bike Path is a "trail" as that word is ordinarily and popularly used. "The relevant linguistic facts" show that the word trail, in its ordinary and popular usage, includes the Skokie Valley Bike Path. *Muscarello v. United States*, 524 U.S. 125, 131 (1998) (analyzing "relevant linguistic facts" to determine the ordinary meaning of the word "carry.")

The Court may look to the usage of the word "trail" throughout this litigation as linguistic evidence that the Skokie Valley Bike Path is a "trail" as

that word is ordinarily and popularly used. In fact, the Court need look no further than Plaintiff's Complaint at Law in this case, in which her counsel wrote:

> "That on August 21, 2013, and for a long time prior to and subsequent thereto, Defendants, COUNTY OF LAKE and CITY OF HIGHLAND PARK, by and through their agents and employees, owned, operated, maintained and/or controlled a paved bicycle ***trail*** known as the Old Skokie Bike Path (hereinafter "the Bike Path") in the City of Highland Park, County of Lake and State of Illinois, specifically, the section of the bike path running parallel to Skokie Valley Road, US 41, in between the intersections of Park Avenue West and Old Deerfield Road." C3 ¶ 4, A001 ¶ 4, (emphasis added).

Additionally, the record in this case contains several examples of Plaintiff and several witnesses who were intimately familiar with the Skokie Valley Bike Path referring to it as a "trail," unprompted by any suggestion from Defendants' counsels. Four (4) examples are found in Plaintiff's deposition testimony alone:

> Q: And where was the group? If you were describing in relationship to a map, where was the group?
>
> A: Oh, just north of Old Deerfield Road on the bunny ***trail***. The bike path. We call it the bunny ***trail*** because they have a lot of bunnies on it. C536 (emphasis added).
>
> ***
>
> Q: Describe the intersection of the bike path and Old Deerfield Road and how you, with your group of bikers, travel across that – go into Deerfield Road to continue on the bike path.
>
> A: There's – Old Deerfield Road is a, you know, two-lane street, one lane in each direction. The bike path intersects at a 90-degree angle. And

there's a stop sign for the users of the ***trail***. There's no stop sign for the users of the road. So we stop. C538-C539 (emphasis added).

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Q: Showing you what is marked as Exhibit 2 for this deposition. What is depicted in that picture?

A: That is the bunny ***trail***.

Q: And specifically, are you familiar with that location of the trail?

A: Yes.

Q: Is that a fair and accurate depiction of the location at which your accident occurred?

A: Yes. C550-C551 (emphasis added).

One of Plaintiff's fellow riders on the day of the occurrence referred to the Skokie Valley Bike Path similarly, only altering his diction upon the suggestion of Plaintiff's counsel:

Q: I'm showing you what's marked, actually as Syed Exhibit 5. Can you describe what is in that photograph?

A: This is that ***trail***, that road which we ride. Our small – what do you call this, bike road?

MR. HIGGINS: Bike path.

THE WITNESS: Bike path.

C752-C753 (emphasis added).

Paul Tyska, describing a different bicycle accident on the Skokie Valley Bike Path testified:

Q: And at some point either the police or fire department ambulance got there?

A: Yes. The ambulance did. They backed up down the ***trail***. I think, you know, I had stood up and probably walked into the ambulance if I remember correctly. C898 (emphasis added).

One of the police officers that responded to Mr. Tyska's accident testified as follows:

Q: What is your independent recollection of what you saw when you got there?

A: When I got there and responded that day, the ambulance was already there. Like I said, Officer Williamson was already there. Mr. Tyska was already in the back of the ambulance. Officer Williamson, you know, kind of related to me what was going on.

I remember going into the back of the ambulance and speaking with Mr. Tyska and asked him what happened. And that's what I wrote in my report that – he said he was riding on the bike path northbound and that he rode over several bumps on the asphalt of the ***trail*** and that caused him to lose control. And that's when he fell off and suffered his injuries. C446 (emphasis added).

In addition to the use of the word "trail" throughout this litigation, the Court should recognize that the Skokie Valley Bike Path is an example of what is ordinarily and popularly referred to as a "Rail with Trail." According to the Rails-to-Trails Conservancy ("RTC"), a 501(c)(3) non-profit organization "dedicated to creating a nationwide network of trails from former rail lines and connecting corridors to build healthier places for healthier people[1]," "Rails with Trails" are "shared use paths that are located within or immediately adjacent to

[1] http://www.railstotrails.org/our-work/, accessed on February 20, 2017.

active railroad rights-of-way." Kelly Pack et al., Rails-to-Trails Conservancy, America's Rails-with-Trails: A Resource for Planners, Agencies and Advocates on Trails Along Active Railroad Corridors, (4th ed. 2013), p. 5, *available at*, www.railstotrails.org/resource-library/resources/americas-rails-with-trails/. The record in this case shows that the Skokie Valley Bike Path neatly fits within this model. Thus, the RTC's September 2013 Report demonstrates that the ordinary and popular meaning of the word "trail" includes a shared use path adjacent to an active railroad. Moreover, the RTC specifically identified the "Skokie Valley Trail" as a "Rail with Trail."[2] Pack et al, *supra* at p. 44.

Finally, as linguistic evidence that the Skokie Valley Bike Path is a "trail" under the ordinary and popular use of the term, the Court should consider the numerous publications that have repeatedly used the word "trail" as an appropriate descriptor for it. *See Muscarello*, 524 U.S. at 129 (surveying "modern press usage" to determine ordinary English meaning of the phrase "carries a firearm.")

- On February 6, 2012, Trib Local, published an article entitled "Proposed funding cuts could leave gap in north suburban bicycle ***trail***," in which it noted, "The Skokie Valley ***Trail*** provides walkers, joggers, and bicyclists with a dedicated path beginning at Highland Park's southern edge and meandering north, paralleling Highway 41, to Lake Bluff, where it meets with ***another trail*** that continues to Kenosha, Wis." John P. Huston, *Proposed funding cuts could leave gap in north suburban bicycle trail,*

[2] RTC's Report also identifies ten (10) other Rails with Trails throughout Illinois.

TRIB LOCAL (Feb. 6, 2012, 11:00 a.m.), http://triblocal.com/wilmette-kenilworth/2012/02/06/proposed-funding-cuts-could-leave-gap-in-north-suburban-bicycle-trail/ (emphasis added).

- On February 23, 2012, Chicago Now published an article titled "***Skokie Valley Trail*** Missing Link from Waukegan to Chicago," which noted "[a]nother way you can support ***trails like the Skokie Valley Trail*** is to become a member of the Rails to Trails Conservancy." Brent Cohrs, *Skokie Valley Trail Missing Link from Waukegan to Chicago*, CHICAGO NOW (Feb. 23, 2012, 9:52 a.m.), http://www.chicagonow.com/easy-as-riding-a-bike/2012/02/skokie-valley-trail/ (emphasis added).
- On May 16, 2013, the Chicago Reader published "a summer guide to biking for beer" which recommended readers "[s]top at the brewpub for a Honey Badger golden ale or Skull and Bones double pale ale; from there you can either catch the Metra back to Chicago or take the North Shore Bike Path west to the Skokie Valley Bikeway and head south all the way to where it ends at Lake Cook Road. I'd recommend the latter, since the bike ***trail*** is probably the nicest of the ride, smooth and nearly empty, protected by trees from the highway nearby." Julia Thiel, Summer Guide: Two cycling day trips to three brewpubs, CHICAGO READER, May 16, 2013, http://www.chicagoreader.com/chicago/cycling-beer-three-floyds-flossmoor-lake-bluff-day-trips/Content?oid=9657166 (emphasis added).
- In 2014, the Illinois Department of Natural Resources published the Illinois Bike Trails Map, identifying the "Skokie Valley Bikeway" as trail

number 40. Illinois Department of Natural Resources, Illinois Bike Trails Map (2014), *available at* https://www.dnr.illinois.gov/publications/documents/00000642.pdf

- On February 19, 2015, the Chicago Tribune published a piece which informed readers that "[t]he new path will also allow users of the ***Skokie Valley Trail*** to cross Old Orchard Road at the Woods Drive intersection, which has a traffic signal. Mike Isaacs, *Woods Drive property owner to build connecting path for village*, CHICAGO TRIBUNE (Feb. 19, 2015, 11:38 a.m.), http://www.chicagotribune.com/suburbs/skokie/news/ct-skr-woods-drive-plan-tl-0226-20150219-story.html (emphasis added).
- On November 23, 2016, the Lake County News-Sun published an article advising readers that "Lake County Cyclists who enjoy riding on the Skokie Valley Bike Path will eventually be able to use the ***trail*** to travel into Cook County – if a plan to build a bridge over Lake Cook Road moves forward." Luke Hammill, *Hearing set on extending bike path in Lake County*, LAKE COUNTY NEWS-SUN (Nov. 23, 2016 2:38 p.m.), http://chicagotribune.com/suburbs/lake-county-news-sun/ct-lns-skokie-valley-bike-extension-st-1122-20161123-story.html (emphasis added).

In summary, the record in this case, the RTC Resource publication, and numerous local publications serve as "linguistic facts" leading to the inexorable conclusion that the Skokie Valley Bike Path is a "trail" as that word is ordinarily and popularly used. Therefore, for purposes of this case, it is not necessary to determine how broad the term "trail" may be, as it is certainly

broad enough to include the Skokie Valley Bike Path. *See Ries*, 242 Ill. 2d at 217 ("[f]or purposes of this case, it is not necessary to determine how broad the term "custody" may be, as it is certainly broad enough to include situations such as this.")

II. ANY AMBIGUITY IN SECTION 3-107(b) SHOULD BE RESOLVED IN FAVOR OF ABSOLUTE IMMUNITY FOR THE CITY OF HIGHLAND PARK.

"A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses." *Beachem*, 229 Ill. 2d at 246. If the Court determines that a statute is ambiguous while determining legislative intent, it may consider "the purpose and necessity for the law, the evils sought to be remedied and the goals to be achieved, and the consequences that would result from construing the statute one way or the other." *Hubble v. Bi-State Dev. Agency of the Illinois-Missouri Metro. Dist.*, 238 Ill. 2d 262, 268 (Ill. 2010).

In construing Section 3-107(b), the Appellate Court relied upon the Webster's Third New International Dictionary (1981) definition of "trail" as a "marked path through a forest or mountainous region." A018, ¶ 29. The Appellate Court first used this definition of "trail" in *Brown v. Cook Cnty. Forest Pres.*, 284 Ill. App. 3d 1098, 1101 (Ill. App. 1st Dist. 1996), and has referred back to it in each case in which it has analyzed Section 3-107(b). As there are no "mountainous regions" in Illinois, the Appellate Court's reliance on this definition has effectively limited immunity under Section 3-107(b) to "a marked path through a forest.". This limitation is not expressly found in the

statute. If the legislature intended to limit immunity under Section 3-107(b) to hiking, riding, fishing or hunting paths through a forest, it could have clearly and simply said so. However, the legislature's words indicate that it intended no such limitation and "the appellate court has never explained why the legislature would intend such a thing, and has never attempted to justify its interpretation from a policy standpoint." *Home Star Bank and Fin. Servs. v. Emergency Care and Health Org., Ltd.*, 2014 IL 115526 at ¶ 47. Thus, the Appellate Court's use of this extremely narrow definition of "trail" was erroneous.

Several alternate definitions of the word "trail" exist that would better reflect the legislature's intent. The Webster's New World College Dictionary, Fourth Edition (2002) defines "trail" as "a path or track made by repeated passage or deliberately blazed; ***a paved or maintained path or track, as for bicycling or hiking***." (Emphasis added). The Webster's Collegiate Dictionary, Tenth Edition (1995) defines "trail" as "'a marked or established path or route." In the Recreational Trails of Illinois Act, 20 ILCS 862/10, discussed at length *infra* in Section II(C), the legislature defined the phrase "recreational trail" in a manner that implies the word "trail" without any modifier means "a thoroughfare or track across land or snow." Applying any of these definitions to the exclusion of the Appellate Court's narrow definition would further the general principle of statutory construction to "give statutes the fullest, rather than the narrowest, possible meaning to which they are susceptible." *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 11 (Ill. 2009) which remains proper here in

light of "the absence of any indication that the legislature intended the term ... to have a narrower meaning..." *Id.* at 11-12. Ultimately, under any of these definitions of the word trail, the record in this case patently supports the conclusion that the Skokie Valley Bike Path is a trail, and thus the City of Highland Park is entitled to immunity under Section 3-107(b) as a matter of law.

A. The Purpose of the Tort Immunity Act Supports an Interpretation of the Word "Trail" that Would Immunize the City of Highland Park.

As this Court has long recognized, "the purpose of the Tort Immunity Act is to protect local public entities and public employees from liability arising from the operation of government. By providing immunity, the General Assembly sought to prevent funds from being diverted from their intended purpose to the payment of damage claims." *Harris v. Thompson*, 2012 IL 112525 at ¶ 17. "'Taxes are raised for certain specific government purposes; and, if they could be diverted to the payment of the damage claims, the more important work of government, which every municipality must perform regardless of its other relations, would be seriously impaired, if not totally destroyed.'" *Davis v. Chicago Housing Authority*, 136 Ill. 2d 296, 302 (Ill. 1990), quoting 18 McQuillin on Municipal Corporations § 53.24 (1963).

The Appellate Court below ignored this generally accepted understanding of the Tort Immunity Act's purpose and instead, relying on *Goodwin v. Carbondale Park Dist.*, 268 Ill. App. 3d 489, 493 (Ill. App. 5th Dist. 1994),

posited that the categorical grant of immunity in Section 3-107(b) derived from a recognition that "requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting." A019, ¶ 32. The Appellate Court's reliance on *Goodwin* for this principle was erroneous because the *Goodwin* court drew this conclusion by improperly reading a limitation into Section 3-107(b) that a trail must be "unimproved," i.e., natural, to garner immunity. *McElroy v. Forest Pres. Dist. of Lake Cnty.*, 384 Ill. App. 3d 662, 667 (Ill. App. 2nd Dist. 2008). No reading of Section 3-107(b) supports an inference that its purpose is limited to trails in "natural settings." The limitation is certainly not expressed. To the contrary, Section 3-107(b) explicitly provides immunity for injuries resulting for a condition of "***any*** hiking, riding, fishing or hunting trail." (Emphasis added).

In *Moore*, 2012 IL 112788 at ¶ 22, while discussing its rationale for holding that the presence of snow and ice is a "condition" of public property pursuant to Section 3-106 of the Tort Immunity Act, this Court stated, "we find it to be in line with the public policy of this state to promote the expenditure of public funds for the purpose of creating greater access to recreational areas, rather than to divert those funds to pay damage claims stemming from the resulting condition of that property." Similarly, the public policy behind Section 3-107(b) is to promote the expenditure of public funds for purpose of creating greater access to riding trails, rather than to divert those funds to pay damage claims stemming from the resulting condition of those trails. Adopting any of

the definitions of "trail" suggested here will provide a better means of furthering this goal than the absurdly narrow definition used by the Appellate Court.

B. Weighing the Different Consequences of Choosing Amongst the Definitions of "Trail" Supports an Interpretation that Would Immunize the City of Highland Park.

The consequence that would result from construing the word "trail" in the same manner as the Appellate Court would effectively render Section 3-107(b) meaningless to any local government entity except forest preserve districts. The Court should not assume that the legislature intended such an absurd construction and result. *Landis*, 235 Ill. 2d at 12.

This Court has stated that a statute's title "can provide guidance in resolving statutory ambiguities." *Home Star Bank and Fin. Servs.*, 2014 IL 115526 at ¶ 41. The title of the statute at issue is the Local Governmental and Governmental Tort Immunity Act, not the Forest Preserve Immunity Act. The legislature clearly intended all local public entities, as defined by the Act, to benefit equally from each immunity it provided. This conclusion is buttressed by the historical context in which the legislature passed the Tort Immunity Act.

The Tort Immunity Act was enacted in 1965, following this Court's decision in *Harvey v. Clyde Park Dist.*, 32 Ill. 2d 60 (Ill. 1964). *Harvey* followed this Court's landmark decision in *Molitor v. Kaneland Cmty. Unit Sch. Dist. No. 302*, 18 Ill. 2d 11 (Ill. 1959), which "effectively abolished governmental tort immunity for all units of local government." *Coleman*, 2016 IL 117952 at ¶ 33. Following *Molitor*, the legislature adopted a statute providing forest preserve

districts and park districts immunity from negligence actions. *Harvey*, 32 Ill. 2d at 62. The *Harvey* plaintiff sued defendant Clyde Park District to recover damages for personal injuries suffered as a result of the defendant's negligence in maintaining its playground facilities. *Id.* at 61. The Circuit Court granted the defendant's motion to dismiss based on the statutory immunity and this Court reversed, holding that the statute violated the Illinois Constitution because its grant of immunity to only certain categories of municipal entities was arbitrary. *Id.* at 67.

Given this historical context, it is inconceivable that the legislature intended its choice of the word "trail" in Section 3-107(b) to effectively limit immunity to one category of municipalities. "Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law." *People v. Hickman*, 163 Ill. 2d 250, 262 (Ill. 1994). Moreover, statutes should be construed to avoid an unconstitutional result. *In re Application for Judgment and Sale of Delinquent Props. for Tax Year 1989*, 167 Ill. 2d 161, 168 (Ill. 1995).

In summary, the historical context of the Tort Immunity Act does not allow a conclusion that the legislature intended "trail" to mean a marked path through a forest. To make that conclusion would require the Court to imagine that the legislature intended to run afoul of *Harvey*.

In contrast, construing the word "trail" according to any of the definitions suggested here would not arbitrarily favor any single type of municipality over another. Counties, townships, municipalities, park districts, etc. would qualify

for the same immunity which the Appellate Court below *de facto* limited to forest preserve districts. There is no rational basis upon which to conclude that the legislature intended forest preserve districts to benefit from greater immunity than other types of local public entities for providing the same type of public service, i.e., allowing the public to use paths or tracks for the purpose of riding.

Moreover, construing the word "trail" according to any of the definitions suggested here would have the consequence of encouraging all local public entities to provide the public with access to riding paths or tracks. As the California Court of Appeal thoughtfully explained:

> "Ensuring immunity for dangerous conditions on recreational trails of all kinds encourages public entities to open their property for public recreational use. The actual cost of litigation over injuries suffered by the multiple recreational users of urban bicycle paths, or even the specter of it, might well cause cities or counties to reconsider allowing the operation of a bicycle path, which after all, produces no revenue. No doubt it is cheaper to build fences and keep the public out than to litigate and pay three, four, five or more judgments each year in perpetuity. But that would deprive the public of access to recreational opportunities. If public entities cannot rely on the immunity for recreational trails, they will close down existing trails and perhaps entire parks where those trails can be found." *Montenegro v. City of Bradbury*, 215 Cal. App. 4th 924, 932 (Cal. App. 2nd 2013).

Therefore, considering the consequences that would result from construing Section 3-107(b) one way or the other supports a conclusion that the legislature intended a bicycle path like the Skokie Valley Bike Path to qualify as a "trail."

C. The Recreational Trails of Illinois Act Supports an Interpretation of "Trail" that Immunizes the City of Highland Park.

In interpreting an ambiguous statute, the Court presumes "that several statutes relating to the same subject are governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious" and thus considers "similar and related enactments, though no strictly *in pari materia*." *People ex rel. Ill. Dept. of Corrs. v. Hawkins*, 2011 IL 110792 at ¶ 24; *see also Bd. of Educ. Of City of Chi. v. A, C, and S, Inc.*, 131 Ill. 2d 428, 468 (Ill. 1989), quoting 2A N. Singer, Sutherland on Statutory Construction § 53.3, at 554 (Sands 4th ed. 1984) ("On the basis of analogy the interpretation of a doubtful statute may be influenced by language of other statutes which are not specifically related, but which apply to similar persons, things, or relationships."), and *Alexander Lumber Co. v. Coberg*, 356 Ill. 49, 54 (Ill. 1934) (in interpreting statutes, the Court may resort to "other existing laws.").

The legislature enacted the Recreational Trails of Illinois Act, 20 ILCS 862/10 *et seq.* to promote recreation and conservation through "[t]he establishment and maintenance of recreational trails by the State of Illinois." 20 ILCS 826/5(2). In this Act, the legislature defined the phrase "recreational trail" as:

> "A thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-county skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or

> water activity, and vehicular travel by motorcycle or off-highway vehicles." 20 ILCS 862/10.

The second clause of this definition modifies "recreational" in that it provides a non-exhaustive list of examples of "recreational purposes." Thus, the first clause, i.e., "a thoroughfare or track across land or snow" remains as the explicit definition of the word "trail." Because Section 3-107(b) of the Tort Immunity Act and the Recreational Trails of Illinois Act apply to similar things, i.e., trails, and because they have similar purposes – to encourage the establishment and maintenance of recreational trails by local governments and the State, respectively – the Court should presume that the legislature intended both references to "trails" to have the same meaning.

Thus, the Court should conclude that Section 3-107(b) provides local government entities like the City of Highland Park immunity against claims arising out of injuries that are caused by the condition of any hiking, riding, fishing, or hunting thoroughfare or track across land or snow. Based on this record, it remains clear that the Skokie Valley Bike Path is a riding thoroughfare or track across land, and therefore, the City of Highland Park is entitled to immunity against Plaintiff's claim for injury.

D. The California Court of Appeal Decisions Interpreting an Analogous Statute Support an Interpretation of "Trail" that Immunizes the City of Highland Park.

Where statutory provisions from other States were enacted to "achieve the same result" as the statutory provision at issue, the Court may look to "out-of-state cases interpreting" them when determining the legislature's intent.

Solon v. Midwest Med. Records Ass'n, Inc., 236 Ill. 2d 433 (Ill. 2010) (relying on cases from Texas and New York to determine the legislative intent of certain provisions of the Illinois Code of Civil Procedure).

The Tort Immunity Act is based in part on the California Government Claims Act. Cal. Code Section 810 *et seq.* David C. Baum, *Tort Liability of Local Governments and Their Employees: An Introduction to the Illinois Immunity Act*, 1966 Ill. L.F. 981, 985 (1966). The California Government Claims Act contains an analog to Section 3-107(b) of the Tort Immunity Act in Cal. Code Section 831.4(b) which provides immunity to any public entity for an injury caused by the condition of "any trail used for [fishing, hunting, camping, hiking, riding...]." As in Illinois, the California Legislature did not define the word "trail."

In *Carroll v. County of Los Angeles*, 60 Cal. App. 4th 606 (Cal. App. 2nd 1997), the Court was faced with the issue of whether the South Bay Bicycle Path was a "trail" under Section 831.4(b). The plaintiff sued the County of Los Angeles for injuries he suffered when he struck a crack while rollerblading along the path and fell. *Id.* at 608. The trial court granted the County of Los Angeles's motion for judgment on the basis that the path was a "trail" under Section 831.4(b) and the plaintiff appealed. *Id.*

The Court began its analysis by noting the characteristics of the South Bay Bicycle Path, namely that it (1) stretched along the coast for 19.2 miles mainly on the beach, but sometimes ran adjacent to homes and sidewalks, (2) was paved and striped down the middle supporting two lanes of traffic, and (3)

was used daily by walkers, joggers, skateboarders, rollerskaters, rollerbladers, as well as bicycle riders. *Id.* at 607. The Court continued, defining "trail" as "'a marked or established path or route....'" citing Webster's Collegiate Dictionary (10th ed. 1995), and noting that the words "'trail' and 'path' are synonymous" citing Rodale, The Synonym Finder (1978), p. 1249. *Id.* at 609. The Court applied this definition to the South Bay Bicycle Path and held that it was indeed a "trail" as contemplated by Section 831.4(b). In its analysis the Court noted that the presence of the word "*any*" in the explicit terms of the immunity provision belied the plaintiff's contention that it was not intended to include paved paths. *Id.,* (emphasis in original).

In *Farnham v. City of Los Angeles*, 68 Cal. App. 4th 1097 (Cal. App. 2nd 1999), the Court was called upon to determine whether the Sepulveda Basin Bikeway was a "trail" under Section 831.4(b). There the plaintiff sued the City of Los Angeles to recover for personal injuries he suffered when a portion of the outer pavement of the path gave way while he was bicycling upon it. *Id.* at 1099. The trial court granted the City of Los Angeles's motion for judgment on the pleadings, and the plaintiff appealed. *Id.*

The Court began its analysis by recognizing that the Sepulveda Basin Bikeway was defined as a "Class I bikeway" by the Streets and Highways Code Section 890.4(a). *Id.* Under that section, a Class I bikeway is defined as "bike paths or shared use paths...which provide a completely separated right-of-way designated for the exclusive use of bicycles and pedestrians with crossflows by motorists minimized." The Court concluded that a bicycle path meeting the

definition of a Class I bikeway qualified as a trail under Section 831.4(b), discounting the plaintiff's argument that Section 831.4(b) was intended to apply only to "primitive areas." 68 Cal. App. 4th at 1102-1103. In its opinion the Court considered the consequences of its holding, stating:

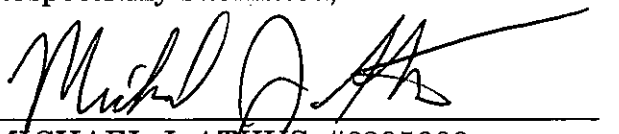
> Paved trails are subject to changing irregularity of surface conditions due to seismic movement, natural settlement, or stress from traffic. Additionally, the weather can cause dirt or sand to be blown on a trail, creating an unsafe surface for almost any user. Rocks, tree branches and other debris often find their way onto a trail. Bicycle paths (or bikeways) are not velodromes, and are not necessarily designed for a user to travel as fast as she or he can, although some people often do. In today's litigious society, it does not take a very large crystal ball to foresee the plethora of litigations cities or counties might face over bicycle paths, which are used daily by a variety of people (bicyclists, skateboarders, rollerbladers, rollerskaters, joggers, and walkers) all going at different speeds. The actual coast of such litigation, or even the specter of it, might well cause cities or counties to reconsider allowing the operation of a bicycle path which, after all, produces no revenue." *Id.* at 1103.

These well-reasoned decisions of the California Court of Appeal support the conclusion that the legislature did not intend to limit the definition of "trail" in Section 3-107(b) to paths in forest regions, but rather intended a broader meaning of "trail" notwithstanding the nature of the path's surface, i.e., paved or unpaved, or developed setting, i.e. suburban or forested. This Court should follow its lead and conclude that the Skokie Valley Bike Path is a "trail" as contemplated by Section 3-107(b).

CONCLUSION

For all the above-argued reasons, Defendant-Appellant, the CITY OF HIGHLAND PARK, respectfully requests that this Honorable Court reverse the decision of the Appellate Court and affirm the judgment of the Circuit Court in its favor.

Respectfully submitted,



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MATTHEW B. KNIGHT, #6283271

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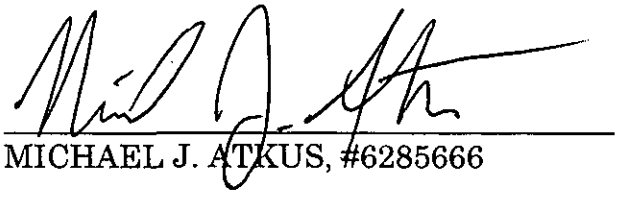
mknight@khkklaw.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.



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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys of record herein, certifies that the original and nineteen (19) copies of the foregoing **BRIEF OF DEFENDANT-APPELLANT THE CITY OF HIGHLAND PARK** was filed with the Clerk of the Supreme Court of Illinois, and three (3) copies thereof were served upon the following, by depositing the same in the U.S. Mail, first-class postage prepaid on the 1st day of March, 2017:

Peter F. Higgins, Esq.
Lipkin & Higgins
222 North LaSalle Street
Suite 2100
Chicago, Illinois 60601

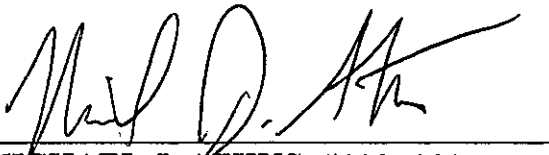

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TABLE OF CONTENTS FOR APPENDIX

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

KATHY CORBETT,

Plaintiff,

v.

COUNTY OF LAKE, an Illinois Municipal Corporation, and the CITY OF HIGHLAND PARK, an Illinois Municipal Corporation,

Defendants.

Court No. 14 L 49

FILED
APR 14 2014
Keith Grim
CIRCUIT CLERK

COMPLAINT AT LAW

NOW COMES Plaintiff, KATHY CORBETT, by and through her attorneys, Lipkin & Higgins, and for her Complaint at Law against Defendant, COUNTY OF LAKE, an Illinois Municipal Corporation, and Defendant, CITY OF HIGHLAND PARK, an Illinois Municipal Corporation, affirmatively states as follows:

1. That at all times relevant hereto, Plaintiff, KATHY CORBETT, was a resident of the County of Cook, State of Illinois.

2. That on August 21, 2013, and for a long time prior and subsequent thereto, Defendant, COUNTY OF LAKE, was an Illinois Municipal Corporation and local public entity.

3. That on August 21, 2013, and for a long time prior and subsequent thereto, Defendant, CITY OF HIGHLAND PARK, was an Illinois Municipal Corporation and local public entity.

4. That on August 21, 2013, and for a long time prior and subsequent thereto, Defendants, COUNTY OF LAKE and CITY OF HIGHLAND PARK, by and through their agents and employees, owned, operated, maintained and/or controlled a paved bicycle trail

NOTICE
BY LOCAL RULE 3.12
THIS CASE IS HEREBY SET FOR A SCHEDULING
CONFERENCE IN COURTROOM C305 ON 10/9
20 14 AT 9 AM IN THE 18 NORTH COUNTY STREET,
WAUKEGAN, ILLINOIS. FAILURE TO APPEAR MAY RESULT
IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT
BEING ENTERED.

known as the Old Skokie Bike Path (hereinafter "the Bike Path"), in the City of Highland Park, County of Lake and State of Illinois, specifically, the section of the bike path running parallel to Skokie Valley Road, US 41, in between the intersections of Park Avenue West and Old Deerfield Road.

5. That on August 21, 2013, Plaintiff was riding her bicycle on the aforesaid Bike Path as an intended user of said path.

6. That at all times relevant hereto, Plaintiff was in the exercise of ordinary care and caution for her own safety.

7. That prior to August 21, 2013, Defendants, COUNTY OF LAKE and CITY OF HIGHLAND PARK, had been informed of a specific dangerous condition existing in the section of the Bike Path between Park Avenue West and Old Deerfield Road, where weeds and other vegetation were growing up through the asphalt of said path, causing portions of the path to be broken, bumpy and elevated.

8. That it then and there became and was the duty of the Defendants, COUNTY OF LAKE and CITY OF HIGHLAND PARK, to be free from willful and wanton conduct in the care, maintenance, operation and control of the Bike Path for the safety of those persons, including Plaintiff, who were lawfully on said bike path.

9. That on or about August 21, 2013, Defendants, COUNTY OF LAKE and CITY OF HIGHLAND PARK, in breach of their aforesaid duty, showed an utter indifference to or a conscious disregard for the safety of others by committing the following willful and wanton acts or omissions:

a. Disregarded complaints made to Defendants concerning the specific dangerous condition of the section of the Bike Path between Park Avenue West and Old Deerfield Road prior to Plaintiff being injured;

b. Disregarded knowledge of injuries to other individuals using the section of the Bike Path between Park Avenue West and Old Deerfield Road due to the dangerous condition prior to Plaintiff being injured;

c. Disregarded the defective and dangerous condition of said bike path for a long period of time prior to Plaintiff being injured;

d. Failed to repair said defective condition of the bike path after complaints of the dangers were made to Defendants;

e. Failed to warn users of said bike path when Defendants knew that others had been injured due to the condition of the path;

f. Failed to inspect the bike path when Defendants had reason to know such inspection was necessary; and

g. Failed to respond to complaints of the condition.

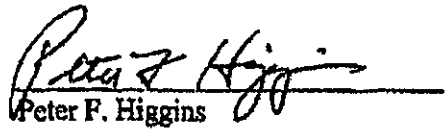
10. That as a direct and proximate result of one or more of the foregoing willful and wanton acts or omissions, Plaintiff, Ms. Corbett, rode her bicycle over the said defective and dangerous section of the Bike Path and was caused to be thrown off of her bicycle, causing her body to land with great force upon the ground, and causing her to suffer severe and diverse personal injuries, both externally and internally, as well as suffering other pecuniary damages.

11. That as a result of the aforesaid incident, the Plaintiff was caused to and will, in the future, experience great pain and suffering, has suffered and will in the future suffer disability and disfigurement, has been caused to incur and will, in the future, incur expenses for necessary medical care, has suffered and will in the future suffer a loss of a normal life, has suffered and will in the future suffer a loss of earnings and profits, and has sustained damage to her personal property, including the loss of use thereof.

WHEREFORE, Plaintiff, KATHY CORBETT, seeks judgment in her favor and against Defendant, COUNTY OF LAKE, an Illinois Municipal Corporation, and Defendant, CITY OF HIGHLAND PARK, an Illinois Municipal Corporation, and each of them in an amount in excess of FIFTY THOUSAND dollars ($50,000.00) together with the costs of this litigation.

Respectfully Submitted,

LIPKIN & HIGGINS



Peter F. Higgins

LIPKIN & HIGGINS
Attorneys for Plaintiff
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Phone: (312) 857-1710
Fax: (312) 857-1711

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED
DEC 16 2015
Keith Brin
CIRCUIT CLERK

Corbett

vs.

City of Highland Park

Case No. 14 L 493

ORDER

This matter coming to be heard on city of Highland Park's Motion for Summary Judgment, the Motion fully briefed and the court advised in the premises.

It is Hereby ordered:

(1) City of Highland Park's Motion is Granted.

(2) This matter is dismissed with prejudice

(3) There is no just reason for delay in appeal pursuant to Supreme Court Rule 304(a)

ENTER:

CHRISTOPHER C. STARCK
JUDGE

Dated this 16th day of December, 2015.

Prepared by:
Attorney's Name: Matthew Knight
Address: 5600 N. River
City: Rosemont State: IL
Phone: 847.26.0726 Zip Code: 60018
Fax:
ARDC: 6283711

171-84 (Rev. 10/11)

No. _____

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

APPEAL TO THE ILLINOIS APPELLATE COURT
SECOND JUDICIAL DISTRICT

KATHY CORBETT,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	No. 14 L 493
	)	
COUNTY OF LAKE, an Illinois Municipal Corporation, and the **CITY OF HIGHLAND PARK**, an Illinois Municipal Corporation,	)	
	)	
Defendants-Appellees.	)	

NOTICE OF APPEAL
OF THE PLAINTIFF-APPELLANT, KATHY CORBETT

Please take notice that the plaintiff-appellant, Kathy Corbett, through her undersigned attorneys, Lipkin and Higgins, hereby appeals to the Illinois Appellate Court, Second Judicial District, the summary judgment orders entered on December 16, 2015, (copies of which are attached to this Notice and incorporated by reference), in which the court entered summary judgment in favor of the defendants-appellees, County of Lake, an Illinois Municipal corporation, and the City of Highland Park, an Illinois Municipal Corporation, and against the plaintiff-appellant, Kathy Corbett. By this appeal, the plaintiff-appellant will ask the Illinois Appellate Court to:

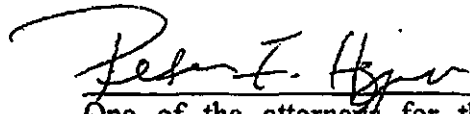
1. Reverse the summary judgment orders entered on December 16, 2015 entered in favor of the defendants-appellees, County of Lake, an Illinois Municipal corporation, and the City of Highland Park, an Illinois Municipal Corporation, and against the plaintiff-appellant,

Kathy Corbett;

2. Remand this case to the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, for further proceedings consistent with this court's decision; and

3. Enter any such other relief that the Appellate Court determines is necessary, appropriate and just.

Respectfully submitted,



One of the attorneys for the plaintiff-appellant, Kathy Corbett

Peter F. Higgins
LIPKIN & HIGGINS
222 N. LaSalle Street, Suite 2100
Chicago, IL 60601
(312) 857-1710

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

Corbett

vs.

City of Highland Park

FILED
DEC 16 2015
Case No. 14 L 493
Keith Brin
CIRCUIT CLERK

ORDER

This matter coming to be heard on city of Highland Park's Motion for Summary Judgment, the Motion fully briefed and the court advised in the premises:

It is Hereby Ordered:

(1) City of Highland Park's Motion is Granted.

(2) This matter is dismissed with prejudice

(3) There is no just reason for delay in appeal pursuant to Supreme Court Rule 304(a)

ENTER:

CHRISTOPHER C. STARCK
JUDGE

Dated this 16th day of December, 2015.

Prepared by:
Attorney's Name: Matthew J. Knight
Address: 560 N. River
City: Rosemont State: IL
Phone: 847.26[illegible] Zip Code: 60018
Fax:
ARDC: 6283771

171-84 (Rev. 10/11)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED
DEC 16 2015
Kathy Fein
CIRCUIT CLERK

Corbett

vs.

Case No. 14 L 493

Lake County, et al.

ORDER

This matter coming to be heard on Lake Countys Motion for Summary Judgment, Counsel for all parties being present, due notice having been given and the Court being fully advised in the premises,

IT IS HEREBY ORDERED THAT:

(1) Defendant County of Lake's Motion for Summary Judgment is granted, since County of Lake is entitled to immunity pursuant to 745 ILCS 10/3-106;

(2) Judgment is granted in favor of Defendant County of Lake and against plaintiff Kathy Corbett;

(3) This is a final order, and there is no just reason for delaying either enforcement or appeal or both.

ENTER:

CHRISTOPHER C. STARCK
JUDGE

Dated this 16th day of December, 2015.

Prepared by:
Attorney's Name: ASA Kevin Bernell
Address: 18 N. County, 3rd Fl.
City: Waukegan State: IL
Phone: 377-3056 Zip Code: 60085
Fax: 360 6001
ARDC: 6235747

171-94 (Rev. 10/11)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

KATHY CORBETT,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	No. 14 L 493
	)	
COUNTY OF LAKE, an Illinois Municipal Corporation, and the **CITY OF HIGHLAND PARK**, an Illinois Municipal Corporation,	)	
	)	
Defendants-Appellees.	)	

NOTICE OF FILING NOTICE OF APPEAL AND CERTIFICATE OF SERVICE

To: See Attached Service List

Please take notice that on December 30, 2015, the undersigned filed with the Clerk of the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, the plaintiff-appellant, Kathy Corbett's NOTICE OF APPEAL, a copy of which is attached to this Notice and served upon you.

The undersigned certifies, pursuant to 735 ILCS 5/1-109, that on December 30, 2015, a copy of this Notice and the attached NOTICE OF APPEAL were served on the parties to whom this Notice is directed.

Respectfully submitted,

Peter F. Higgins

One of the attorneys for the plaintiff-appellant,
Kathy Corbett

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STATE'S ATTORNEY OF LAKE COUNTY
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(847) 261-0700

Courtesy Copy:

Robert J. Mangan
CLERK, ILLINOIS APPELLATE COURT
SECOND JUDICIAL DISTRICT
55 Symphony Way
Elgin, IL 60120

Illinois Official Reports

Appellate Court

***Corbett v. County of Lake*, 2016 IL App (2d) 160035**

Appellate Court Caption	KATHY CORBETT, Plaintiff-Appellant, v. THE COUNTY OF LAKE and THE CITY OF HIGHLAND PARK, Defendants (The City of Highland Park, Defendant-Appellee).
District & No.	Second District Docket No. 2-16-0035
Filed	September 23, 2016
Decision Under Review	Appeal from the Circuit Court of Lake County, No. 14-L-493; the Hon. Christopher C. Starck, Judge, presiding.
Judgment	Affirmed in part and reversed in part; cause remanded.
Counsel on Appeal	Peter F. Higgins, of Lipkin & Higgins, of Chicago, for appellant. Michael G. Nerheim, State's Attorney, of Waukegan (Janelle K. Christensen and Kevin J. Berrill, Assistant State's Attorneys, of counsel), for appellee.
Panel	PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court, with opinion. Justices Hutchinson and Burke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Kathy Corbett, was seriously injured while riding her bicycle on the Old Skokie Bike Path in Lake County. She filed this action against defendants, the County of Lake (County) and the City of Highland Park (City), alleging that they were liable for defects in the path that caused her accident. The trial court granted both defendants summary judgment (735 ILCS 5/2-1005(c) (West 2014)), based on the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/1-101 *et seq.* (West 2012)). Plaintiff appeals only the judgment in favor of the City, arguing that the trial court erred in holding that the City was immune from liability because, as a matter of law, the bicycle path was a "riding trail" within the meaning of section 3-107(b) of the Act (745 ILCS 10/3-107(b) (West 2012)). We reverse the judgment in favor of the City, and we remand.

¶ 2 We summarize the facts pertinent to this appeal. Plaintiff's complaint alleged as follows. On August 21, 2013, and at all other pertinent times, defendants controlled and maintained that part of the path within Highland Park and specifically the section of the path running parallel to Skokie Valley Road (U.S. Route 41) in between the intersections with Old Deerfield Road and Park Avenue West. By agreement with the County, the City was responsible for routine maintenance of the path, including repairing the pavement. Before August 21, 2013, defendants were on notice that weeds and other vegetation were growing through the asphalt, making portions of the path broken, bumpy, and elevated. Defendants were willfully and wantonly indifferent to the danger. On August 21, 2013, plaintiff, part of a group of cyclists riding together, rode her bicycle over a defective area and was thrown off. She hit the ground and was severely injured.

¶ 3 The City's answer raised the affirmative defense of immunity under section 3-107(b) of the Act, which reads, "Neither a local public entity nor a public employee is liable for an injury caused by a condition of *** [a]ny hiking, riding, fishing or hunting trail." 745 ILCS 10/3-107(b) (West 2012). The City later moved for summary judgment, based on section 3-107(b) of the Act. The City noted that this section provides absolute immunity, even as to willful and wanton conduct. The City then argued that, under the limited case authority that exists on the meaning of "riding trail" (which the Act does not define), the bike path was one.

¶ 4 The City's motion reasoned as follows. In *Brown v. Cook County Forest Preserve*, 284 Ill. App. 3d 1098, 1101 (1996), the First District held that the bicycle path on which the plaintiff was injured was a "riding trail," because it was commonly used by cyclists and was "designed to provide access for bicyclists to the natural and scenic wooded areas" around Saulk Lake. The court held that it made no difference that the path was paved. *Id.* In *McElroy v. Forest Preserve District*, 384 Ill. App. 3d 662 (2008), and *Mull v. Kane County Forest Preserve District*, 337 Ill. App. 3d 589 (2003), this court held that the bicycle paths at issue were riding trails per section 3-107(b). In *McElroy*, this court emphasized (according to the City's motion) that the path had been built for the use of riders and enabled them to enjoy scenery and wildlife. *McElroy*, 384 Ill. App. 3d at 669. In *Mull*, this court stressed (according to the City's motion) that, although the path ran through some developed areas, it was surrounded by wild grasses and shrubs. *Mull*, 337 Ill. App. 3d at 592.

¶ 5 Here, the City's motion argued, the depositions of plaintiff and other people established that the bike path was a "riding trail." It was intended for recreational bicycling; surrounded by shrubs, trees, and wild grasses; separated from residences and commercial businesses; and set

back from the roadway. "Most compelling," plaintiff and her fellow riders called it "the 'bunny trail' because of the bunnies that were regularly present along the route."

¶ 6 The City's motion attached several exhibits, the pertinent parts of which we summarize. In her deposition, plaintiff testified that the southern end of the part of the path at issue was the intersection with Old Deerfield Road, which has two lanes. At the intersection, there is a stop sign for bicyclists on the path but not for vehicles on the road. On August 21, 2013, plaintiff was with a group with whom she regularly rode.

¶ 7 Plaintiff testified that, just before the accident, the group was riding south toward the intersection. About one-tenth of a mile north of the stop sign at the intersection, the person two places ahead of her, Hassan Syed, hit a bump and lost control of his bicycle. Syed crashed, and his bike was turned sideways. The rider immediately in front of plaintiff was able to veer off. However, plaintiff had no place to go; she rode over Syed and his bicycle. As a result, she was thrown off her bike, rose into the air, and fell hard onto the paved surface. Plaintiff did not actually see Syed hit a bump, but he or another rider told her about it later.

¶ 8 Opposing counsel asked plaintiff whether the area of the accident was "surrounded by shrubs" and "wild grasses," whether it was "separated from residences" and "commercial businesses," and whether it was "set back from the highway." Plaintiff answered each question, "Yes." Plaintiff also testified that her accident occurred "just north of Old Deerfield Road on the bunny trail. The bike path. We call it the bunny trail because they have a lot of bunnies on it."

¶ 9 Yves Robaud, who was riding with plaintiff and the others on August 21, 2013, testified in his deposition as follows. Trees line both sides of the path. Asked whether the stretch where the accident occurred was "separated *** from residences and commercial businesses" and "set back from the highway," Robaud responded, "Yes." The accident occurred perhaps 200 yards north of the stop sign. Robaud's description of the accident was consistent with plaintiff's; he had been in between Syed and plaintiff and had seen Syed fall directly in front of him. Robaud rolled over Syed's legs and turned around to see plaintiff lying on the ground, in pain.

¶ 10 In his deposition, Syed testified consistently with plaintiff and Robaud about the accident. He stated that there were shrubs on both sides of the path. He also stated, as did plaintiff and Robaud, that the area of the path where the accident occurred was separated from residences and commercial businesses and set back from the highway. He added, "We call [the area of the path where the accident occurred] a bunny path." This was "[b]ecause there are a lot of bunnies running around there," although on the day of the accident "there was no bunny."

¶ 11 In his deposition, John Stevens, a member of plaintiff's group on the day of the accident, testified that the path was about six feet wide, paved with asphalt, and lined with some type of growth most of the way. The vegetation included hedges and bushes and a small amount of grass. As far as he knew, the path was separated from commercial businesses and any outside traffic (*i.e.*, by those other than bikers and walkers).

¶ 12 Plaintiff responded to the City's motion for summary judgment. She argued that, under the case law, the stretch of the path at issue cannot be considered a riding trail, as it runs through a developed area of Highland Park, not through a forest or a mountainous region. The path is sandwiched between U.S. Route 41 less than a block to the east and railroad tracks less than a block to the west. There are commercial buildings on both sides of the path, and many of the businesses have cyclone fences that abut the path, with industrial materials stacked up immediately behind the fences. Also, large utility poles for Commonwealth Edison, which

owns the right-of-way, line the entire length of the path, and numerous power lines are suspended overhead. The path also bypasses Buckthorn Park, which the City owns. Further, the area of the accident intersects with Old Deerfield Road, a busy city street.

¶ 13 Plaintiff's response attached her affidavit. She stated as follows. She was familiar with the bike path, including the accident scene. The path does not go through a forest or a mountainous region. Some large bushes and some grass line the path, but there are no trees in the area of the accident. The path also passes by Buckthorn Park. Large utility poles line the entire path, with multiple power lines overhead. There are areas where businesses stack materials against fences to the side of the path. At the location of the accident, business buildings butt up against the path, and several parking lots are nearby. In the area of the accident, a cyclone fence abuts the east side of the path, and the highway and the railroad tracks are less than a block from the path.

¶ 14 Plaintiff's affidavit attached photographs in support of most of her statements about the path. The first is a Google aerial photograph with "Buckthorn Park" printed adjacent to the path. The second is a shot of a bicyclist riding on the path, with utility poles and overhead wires on either side; shrubs are on one side of the path, while the other edge is mostly grass. The third shows a stretch of the path with shrubbery and a utility pole on one side, a cyclone fence with industrial pipe stacked up behind it on the other side, and utility poles in the background. The fourth photograph shows the intersection of Old Deerfield Road (which is labeled) and the path; utility poles and wires stretch across the road and line the path in the background. There are buildings a short distance to one side of the path and a parking lot a few feet from the other side. The fifth photograph is a Google aerial view labeled "1495 Old Deerfield Road"; it also identifies the path and several business establishments that are located either between the path and the railroad tracks or between the path and Old Skokie Valley Road. The sixth photograph, also from Google and labeled "1452 Old Deerfield Road," identifies that road and shows what plaintiff's affidavit identified as parking lots located a few feet to the east of the path. The seventh photograph, a Google aerial view of the general area, identifies numerous business establishments on either side of the path. The final photograph shows a sign identifying the path and a stretch of the path, including the grass borders with intermittent shrubbery and utility poles on both sides.

¶ 15 Plaintiff's response also attached the affidavit of Angus Duthie, who stated as follows. He was familiar with the path and the area of plaintiff's accident, having himself hit a bump and crashed on July 9, 2013, about 100 yards north of Old Deerfield Road. The path does not go through a mountainous or wooded region. There are some large bushes and grass but no trees in the area of his crash. In other respects, Duthie's affidavit repeated plaintiff's statements about the path and the surrounding area and attached copies of the same photographs.

¶ 16 The City filed a reply to plaintiff's response. The reply discussed the case law that both parties had cited. The City stressed that the decisions of neighboring landowners to develop their properties did not dispose of whether the path was a "riding trail"; the focus, it maintained, should be on the character of the path itself. The City thus contended that the " '[G]oogle images' " of the surrounding areas were of little evidentiary value. It did not, however, contend that they were improper or would be inadmissible as evidence.

¶ 17 The trial court granted both defendants summary judgment. It held that the County was immune under section 3-106 of the Act (745 ILCS 10/3-106 (West 2012)), which requires proof of willful and wanton conduct to impose liability on a local public entity for injury

caused by conditions of public property that is used for recreational purposes. As noted, plaintiff does not challenge this ruling. The court also held that the City was immune, based on section 3-107(b). The court did not explain its ruling. Plaintiff timely appealed.

¶ 18 On appeal, plaintiff argues that the grant of summary judgment to the City was error, because the path is not a "riding trail" (see 745 ILCS 10/3-107(b) (West 2012)) as that term has been construed by Illinois courts. Plaintiff reasons that several opinions have adopted a dictionary definition of the term, under which the path, at least in the vicinity of her accident, does not qualify as a trail. For the following reasons, we reverse the grant of summary judgment to the City and remand the cause.

¶ 19 Summary judgment is proper when the pleadings, depositions, affidavits, and other matters on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). Our review is *de novo*. *People ex rel. Director of Corrections v. Booth*, 215 Ill. 2d 416, 423 (2005).

¶ 20 This appeal hinges on (1) the definition of the term "riding trail" in section 3-107(b) of the Act and (2) its application to this case. The construction of a statute is, of course, a question of law, which we review *de novo*. *Hawes v. Luhr Brothers, Inc.*, 212 Ill. 2d 93, 105 (2004). Because the Act does not define the term, our appellate courts have taken up the task. We turn to what they have said.

¶ 21 In *Goodwin v. Carbondale Park District*, 268 Ill. App. 3d 489 (1994), the plaintiff was injured when his bicycle collided with a tree that had fallen across a paved bike path that went through a city park. *Id.* at 490. The city of Carbondale owned the property and leased it to the defendant, requiring that it be used " 'exclusively for playgrounds, recreational, open space, non-autoways, and public park purposes.' " *Id.* The city also agreed to " 'construct non-autoways for the use of pedestrians, bicycles and wheelchairs on the property.' " *Id.* at 491. The plaintiff filed an action sounding in both negligence and willful and wanton conduct. The trial court dismissed his complaint, holding in part that the defendant was immune under section 3-107(b) of the Act because the path was a riding trail. *Id.* at 490.

¶ 22 The appellate court reversed the dismissal of the count alleging willful and wanton conduct, holding that "the paved bike path located in a developed city park" was not a riding trail. *Id.* at 492. The court held more broadly that section 3-107(b), which created absolute immunity, even for willful and wanton conduct, was intended to apply to "unimproved property which is not maintained by the local governmental body and which is in its natural condition with obvious hazards as a result of that natural condition." *Id.* at 493. The court continued:

> "Included in section 3-107(b) are unimproved hiking, riding, fishing or hunting trails in undeveloped recreational areas that remain in their natural condition. Absolute immunity is extended for injuries sustained on these types of property because of the burden in both time and money if the local governmental entity were required to maintain these types of property in a safe condition. Furthermore, requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting. We are reminded that the Act is in derogation of the common law and must be strictly construed against a finding of immunity." *Id.*

The court concluded that, given this reasoning, the legislature did not intend section 3-107(b) to include a paved bike path within a developed city park as a riding trail. *Id.* at 493-94.

¶ 23 In *Brown*, the appellate court affirmed a grant of summary judgment based on a holding that section 3-107(b) immunized the defendant from liability for an injury that the plaintiff suffered when he hit a bump and fell off his bicycle while riding on a bicycle path in the Saulk Trail Woods Forest Preserve. *Brown*, 284 Ill. App. 3d at 1099. The court relied on a dictionary definition of "trail" as "a 'marked path through a forest or mountainous region.' " *Id.* at 1101 (quoting Webster's Third New International Dictionary 2423 (1981)). It concluded that the bike path on which the plaintiff had been riding met this definition because, as he conceded, it was "designed to provide access for bicyclists to the natural and scenic wooded areas around Saulk Lake." *Id.* It was not consequential that the path happened to have been paved. *Id.* Also, the court was not persuaded to hold for the plaintiff merely because the path was adjacent to a highway. *Id.* at 1099.

¶ 24 The court distinguished *Goodwin*, explaining that the *Goodwin* court had stressed that the bicycle path in question had "traverse[d] developed city land." *Id.* at 1101. In *Brown*, the area in which the plaintiff was injured was, by his own description, " 'a forest,' " not the type of developed property that had been at issue in *Goodwin*. *Id.*

¶ 25 In *Mull*, this court reversed a judgment for a bicyclist who was injured when she fell while riding on a forest-preserve bicycle path. The path traversed 17 miles of the forest preserve, and the area of the plaintiff's fall was about 50 yards west of a bridge. *Mull*, 337 Ill. App. 3d at 589-90. This court adopted the dictionary definition of "trail" that *Brown* had employed. *Id.* at 591-92. We then held that the case was essentially similar to *Brown*; thus, that the bicycle path was adjacent to a road was not dispositive. *Id.* at 592. Also, that the entrance to a subdivision was near the path was not crucial: a preexisting immunity ought not be lost merely because "a neighboring landowner decide[s] to develop his property." *Id.* at 592-93. What was crucial was that the path was "surrounded by wooded or undeveloped land and [ran] through a forest preserve." *Id.* at 592.

¶ 26 Finally, there is *McElroy*, in which this court held that a path located within a 1225-acre forest preserve was a riding trail per section 3-107(b). The path was 5½ miles long, had bridges and boardwalks, and was open to hikers, bicyclists, and cross-country skiers. *McElroy*, 384 Ill. App. 3d at 663. Ronald McElroy was injured when he rode his bicycle from the gravel trail up a wooden ramp and onto an elevated wooden bridge and fell off the other end of the bridge. *Id.* This court's opinion addressed, in part, a certified question: whether the wooden bridge was part of a hiking or riding trail, per section 3-107(b). *Id.* at 666.

¶ 27 Noting that the Act is in derogation of the common law and must be construed strictly (*id.*), we nonetheless departed from *Goodwin* insofar as it held that a path must be " 'unimproved' " to qualify as a "trail" under section 3-107(b) (*id.* at 667 (quoting *Goodwin*, 268 Ill. App. 3d at 493)). We reasoned that this qualification had no basis in the plain language of the section. *Id.* Nonetheless, we endorsed the dictionary definition of "trail" that was adopted in *Brown* and then *Mull*. We explained:

> "[S]ection 3-107(b) excepts certain 'trails' and does not require that they be strictly 'unimproved' trails. The plain and ordinary meaning of the word 'trail' is a ' " 'marked path through a forest or mountainous region.' " ' [Citations.] As defendant points out, rarely if ever is a 'riding trail' found in nature without any improvements to make the trail accessible and safe to the public." *Id.*

We noted that the plaintiffs did not dispute that the gravel portions of the path were "in a natural area and were to be used for hiking and riding." *Id.* Thus, these portions, at least,

qualified as a "trail" under section 3-107(b). The contested issue was whether the manmade bridge was part of the "trail." *Id.* We held that it was. We reiterated the dictionary definition of "trail" employed in *Brown* and *Mull*. We explained that the gravel path itself was a "trail" because it went through a "natural area" (*id.* at 669), *i.e.*, a "forest" (745 ILCS 5/3-107(b) (West 2004)). We noted that forests and mountainous regions often include rivers, streams, or wetlands, making bridges necessary to enable users to enjoy these natural areas. *Id.* Thus, because the bridge was an integral part of a "trail," McElroy's injury was allegedly caused by a defective condition that was subject to section 3-107(b). *Id.*

¶ 28 We find the preceding opinions persuasive and sensible. For that reason and in the interest of *stare decisis*, we follow them insofar as they are consistent. We adhere to our statement in *McElroy* that a "trail" need not be wholly unimproved to qualify under section 3-107(b). We also adhere to the statements that a path need not be unpaved to qualify as a "trail" and that the character of a path as a "trail" is not automatically defeated by the existence of any development in the surrounding area. To this extent, we do not construe section 3-107(b) as narrowly as some have urged.

¶ 29 Nonetheless, the case law that we follow does require that, to be within section 3-107(b), a path not only be used by bicyclists (or hikers or both) but be located within a " 'forest or mountainous region' " (*Brown*, 284 Ill. App. 3d at 1101 (quoting Webster's Third New International Dictionary 2423 (1981)); see also *McElroy*, 384 Ill. App. 3d at 669; *Mull*, 337 Ill. App. 3d at 592). As a matter of law, this restriction defeats the City's assertion that the path is a riding or hiking trail. No contention has been made that the path is located in a mountainous region (mountains being scarce in Lake County). No serious contention can be made that the path is located in a forest; no reasonable person who views the photographs of the path and its surroundings, or even reads their descriptions by those who have seen them, would describe those surroundings as a forest. The path is bordered by narrow bands of greenway that sport some shrubs and a few trees; these narrow bands are surrounded by industrial development, residential neighborhoods, parking lots, railroad tracks, and major vehicular thoroughfares (to the east *and* south of the area of the accident). The case for considering the path a riding trail would not succeed even if utility poles could be considered trees with power lines for branches.

¶ 30 Although the presence of some development in the area of a path does not *per se* mean that the path is not a "trail," the presence of industrial and residential development *all around* a path negates any conclusion that it is located within a "natural and scenic wooded area[ ]" (*Brown*, 284 Ill. App. 3d at 1101) or that it is "surrounded by wooded or undeveloped land" (*Mull*, 337 Ill. App. 3d at 592). A forest preserve is a "forest," even with a moderate degree of improvement within and without. An industrial/commercial/residential area is not a forest because it contains narrow strips of green space on which a few trees stand. The location of the path in this case is wholly different from the forest preserves in *Brown*, *Mull*, and *McElroy*, which were vast areas that were for the most part kept in their natural state for those who sought recreation in such a relatively wild setting. The path is in even less of a natural state than the city park in *Goodwin*. The people who use the path are interested in recreation, but there is no reason to think that they use it to feel reconnected with wild nature as they ride along and take in a vista of power lines, parking lots, warehouses, cyclone fences, stacks of industrial pipes, and utility poles, towers, and wires.

¶ 31 The frequent appearance of bunnies on the trail does not, in our judgment, call the foregoing analysis into question.

¶ 32 We note further that, aside from the definitional obstacles to calling the path a riding trail, the underlying purpose of section 3-107(b)'s grant of absolute immunity, even for willful and wanton conduct, is not consistent with the trial court's result here. We agree with the *Goodwin* court that behind the categorical grant of immunity is the recognition of "the burden in both time and money if the local governmental entity were required to maintain these types of property in a safe condition" and that "requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting." *Goodwin*, 268 Ill. App. 3d at 493. These considerations do not apply to a bicycle or hiking path in the midst of an easily accessible developed area. Indeed, the City would not even be a party to this appeal had it not found it manageable to take on the burden of maintaining the path in a safe condition.

¶ 33 For the foregoing reasons, we hold that the trial court erred in holding that the path is a riding trail, thus triggering the absolute immunity provided by section 3-107(b) of the Act. The grant of summary judgment for the City is reversed, and the cause is remanded. Of course, as plaintiff has not appealed the grant of summary judgment for the County, that judgment remains intact.

¶ 34 Affirmed in part and reversed in part; cause remanded.

IN THE SUPREME COURT OF ILLNOIS

No. _____

KATHY CORBETT, Plaintiff, v. CITY OF HIGHLAND PARK, an Illinois Municipal Corporation, Defendant.	)	Appeal from the Second District Appellate Court, Elgin, Illinois Appellate Court No. 2-16-0035 There heard on appeal from the Circuit Court of Lake County, Illinois Circuit Court No.: 14 L 000493 The Honorable Christopher C. Starck Judge Presiding

CITY OF HIGHLAND PARK'S PETITION FOR LEAVE TO APPEAL FROM THE APPELLATE COURT SECOND DISTRICT TO THE SUPREME COURT OF ILLINOIS PURSUANT TO RULE 315

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PRAYER FOR LEAVE TO APPEAL

Petitioner, CITY OF HIGHLAND PARK, prays that this Court reverse the Appellate Court and affirm the Circuit Court's order granting it summary judgment under the absolute immunity provided by Section 3-107(b) of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-107(b)).

PERTINENT DATES

The Second District Appellate Court entered its Judgment and Opinion on September 23, 2016. No petition for rehearing was filed.

POINTS AND AUTHORITIES RELIED UPON

STATEMENT OF FACTS

I. NATURE OF THE CASE

Plaintiff initiated this action by filing her Complaint at Law in the Circuit Court of the Nineteenth Judicial Circuit, Lake County. C2. In the Complaint at Law, Plaintiff alleged that the City of Highland Park's willful and wanton acts or omissions proximately caused her to sustain personal injuries when she fell off her bicycle while riding on the Skokie Valley Bike Path within the City of Highland Park. C2-C5. For one of its affirmative defenses to Plaintiff's Complaint at Law, the City of Highland Park posited that it remained entitled to immunity under Section 3-107(b) of the Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act"), specifically setting forth that it remained entitled to absolute immunity because Plaintiff's alleged injury was caused by a condition of a riding trail. C35-39.

Following discovery, the City of Highland Park filed a Motion for Summary Judgment in the Circuit Court pursuant to Section 2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005). C461. In its motion, the City of Highland Park argued pursuant to its affirmative defense, that it was entitled to immunity under Section 3-107(b) of the Tort Immunity Act because the Plaintiff's alleged injury was caused by a condition of a riding trail. C461-C467. On December 16, 2015, the Circuit Court granted the City of Highland Park's Motion for Summary Judgment. C1023.

Plaintiff filed a Notice of Appeal in the Circuit Court on January 4, 2016. C1025. On September 23, 2016, a three-judge panel in the Second District Appellate Court issued an Opinion and Order reversing the Circuit Court's order granting the City of

Highland Park's Motion for Summary Judgment and remanding this matter to the Circuit Court. App. at A1.

II. THE PARTIES

Plaintiff is a resident of Wilmette, Illinois and an avid cyclist. C497; C633.

City of Highland Park is an Illinois Municipal Corporation and a local public entity. C474; 478.

III. THE OCCURRENCE

On August 21, 2013, Plaintiff was riding her bicycle on the Skokie Valley Bike Path with more than five (5) other riders when she had an accident. C528-C534. Plaintiff was familiar with the Skokie Valley Bike Path and had ridden the stretch of path where the accident occurred probably more than fifty (50) times. C507. She was aware of the defects that caused her accident and had seen them several weeks to a month prior to the accident. She never notified anyone. C520.

The accident occurred when one of the riders in front of her hit a bump and crashed. C539. Plaintiff did not have anywhere to go and ended up riding over the crashed rider and his bicycle and flying up in the air and crashing. C539.

IV. THE NATURE OF THE SKOKIE VALLEY BIKE PATH

During discovery in this action, Plaintiff and three (3) of the riders who were in her group at the time of her accident testified during depositions. They testified as follows concerning the nature of the Skokie Valley Bike Path.

A. Deposition Testimony of the Plaintiff

The Skokie Valley Bike Path is a bicycle path used for recreational purposes. C527. Plaintiff and her fellow riders call the Skokie Valley Bike Path the "bunny trail"

because "they have a lot of bunnies on it." C536. The specific location of her accident was just north of Old Deerfield Road. C536. That location is surrounded by shrubs, wild grasses, and trees. C527-C528. The area is also separated from residences, commercial businesses, dedicated parks, and set back from the highway. C528.

B. Deposition Testimony of Hasan Syed

Syed was in the group riding with the Plaintiff on the date of her accident. C732. The Skokie Valley Bike Path was used for recreation – to enjoy your ride slow and to ride for fun. C731. There are shrubs on the side of the path. C730-C731. The path is separated from commercial businesses and residences, and is set back from the highway. C731. The section of the Skokie Valley Bike Path where the accident occurred is commonly known as the "bunny path" because there are a lot of bunnies running around the area. C752.

C. Deposition Testimony of John Stevens

Stevens was in the riding group with the Plaintiff on the date of the accident. C800. The path on which they rode on the day of the accident was asphalt and lined by some type of growth most of the way, whether hedges, bushes, or wild grass. C803. The path is apart from commercial businesses; separate from any outside traffic other than bikes, walkers and runners; and not connected to any particular park. C804.

D. Deposition Testimony of Yves Roubaud

Roubaud was in the group riding with the Plaintiff at the time of her accident and recalls her accident. C670-C671. The stretch of path where the accident occurred is a bicycle path used primarily by bicycle riders for recreational purposes. C669. It is

separated from residences and commercial businesses, and is set back from the highway. C669. There are trees on either side of the path. C666.

ARGUMENT

I. WHY THE APPELLATE COURT'S OPINION WARRANTS REVIEW BY THIS COURT.

Supreme Court Rule 315(c)(5) requires a petitioner explain not only the errors committed below, but also the broader reasons why those errors should not stand unexamined by this Court.

The legal issue involved here is not arcane, nor is it likely to be limited to the parties herein. *Performance Marketing Association v. Hamer*, 2013 Ill. 114496, ¶43 (Karmeier, J., *diss.*). According to the Illinois Department of Natural Resources, in 2014, there existed one hundred (100) bike trails in Illinois of a distance of five (5) miles or greater (over 1,500 miles) as well as many shorter "multi-purpose paths, bike lanes and designated bike routes on streets." *https://www.dnr.illinois.gov/publications/documents/00000642.pdf* (accessed on October 11, 2016). The Illinois Department of Transportation's 2014 Illinois Bike Transportation Plan calls for 10,100 miles of Planned Bikeways, including 6,800 miles of Greenways/Trails and 3,800 miles of On-Road Bikeways. *http://www.idot.illinois.gov/Assets/uploads/files/Transportation-System/Reports/OP&P/Plans/BikePlanSummaryFinal.pdf* (accessed on October 11, 2016). The Plan specifically notes that "[i]ncreasingly, people of all walks of life are using bicycles for transportation or recreation; they commute to work, run errands with their children, or ride on natural trails." *Id.*

This case involves the application of Section 3-107(b) of the Tort Immunity Act to an undisputed set of facts. The section reads, "[n]either a local public entity nor a public employee is liable for an injury caused by a condition of .... any hiking, riding, fishing or hunting trail." The sole question involved in this petition is whether the Skokie Valley Bike Path, as described by the record, is a "riding trail" as contemplated by Section 3-107(b). Since the Tort Immunity Act took effect in 1965, this Court has not analyzed this Section. The Tort Immunity Act does not define either the term "trail" or "riding trail." Prior to this matter, the Appellate Court issued four (4) opinions analyzing this issue and determining whether a given area was a "riding trail" as contemplated by Section 3-107(b). *See Goodwin v. Carbondale Park Dist.*, 268 Ill. App. 3d 489 (Ill. App. 5th Dist. 1994); *Brown v. Cook County Forest Preserve*, 284 Ill. App. 3d 1098 (Ill. App. 1st Dist. 1996), pet. denied, 171 Ill. 2d 562 (Ill. 1997); *Mull v. Kane County Forest Preserve Dist.*, 337 Ill. App. 3d 589 (Ill. App. 2nd Dist. 2003), pet. denied, 204 Ill. 2d 664 (Ill. 2003), and; *McElroy v. Forest Preserve District of Lake County*, 384 Ill. App. 3d 662 (Ill. App. 2nd Dist. 2008). Notably, each of these cases involved personal injuries to bicycle riders. Since the Appellate Court's opinion in this matter, the First District decided *Foust v. Forest Preserve Dist. of Cook County*, 2016 IL App (1st) 160873, also involving an injured bicycle rider. This Court will thus "provide guidance to lower courts going forward" by taking this case. *Cooney v. Rossiter*, 2012 Ill. 113227, ¶44 (Burke, J., *spec. conc.*).

Finally, this case warrants review because of the Court's "responsibility to maintain a sound and uniform body of precedent." *Dillon v. Evanston Hosp.*, 199 Ill.2d 483, 517 (Ill. 2002). In its Opinion and Order, the Appellate Court below deviated from

its traditional analysis in which it examined the nature of the bicycle paths in question as a whole, including factors like the make-up of the paths themselves and whether they were immediately surrounded by flora and fauna in favor of a test hinging solely upon the question of whether the path in question is located within a forest, traverses a "mountainous region" (which is an absurdity in Illinois, as the Court below acknowledged by commenting "mountains being scarce in Lake County" (Op. ¶ 29), and/or whether the surrounding properties are developed – in the Court's words, whether the bicycle path is "in a vista of power lines, parking lots, warehouses, cyclone fences, stacks of industrial pipes, and utility poles, towers, and wires" (Op. ¶ 30), and/or if "a bicycle or hiking path [is] in the midst of an easily accessible developed area." (Op. ¶ 32). This departure from otherwise firmly established case law perpetuates uncertainty in the law, leaving municipalities throughout the State of Illinois unclear as to their responsibilities (and potential tort liabilities) vis-à-vis the bicycle paths in their jurisdictions, and if allowed to stand, will remove a key incentive for local public entities to develop new trails or maintain (rather than remove) existing hiking or biking trails and paths throughout Illinois.

The uncertainty resulting from the Opinion below is further highlighted by the fact that the Appellate Court, Second District has now issued patently conflicting opinions on the issue presented here. In both *Mull* and *McElroy*, different panels of the Second District rejected the reasoning of *Goodwin*, in which the Appellate Court, Fifth District read a limitation into Section 3-107(b) that any "trail" or "path" must be "unimproved" in order to confer the Section's absolute immunity. (Note: the qualifying

term "unimproved" is nowhere contained within section 3-107(b)). For example, in *Mull* the Court observed in relevant part:

> "*We recognize that the trail runs through some developed areas, but it is surrounded by wild grasses and shrubs. Further, the nature of the land next to the trail should not determine immunity. If it did, immunity and nonimmunity could vary depending on an adjacent landowner's decision to develop or not develop his land. We do not believe immunity should be based on decisions made solely by private landowners.*
>
> Also, contrary to plaintiff's contention, the fact that the trail in this case was adjacent to a road is not dispositive. Plaintiff ignores that the trail in *Brown* was adjacent to a highway and, unlike the trail at bar here, the *Brown* trail was paved. The trail here is even less developed than the *Brown* trail because it is not paved but covered with gravel and asphalt. Therefore, we determine that the trail at issue here, like the trail in *Brown*, is a "trail" within the meaning of section 3–107(b) of the Act.
>
> The plaintiff cites *Goodwin v. Carbondale Park District*, 268 Ill.App.3d 489, 205 Ill.Dec. 956, 644 N.E.2d 512 (1994), to support her position that the trail at issue is not a "trail." However, *Goodwin* is distinguishable from this case because the trail in *Goodwin* was located in a developed city park (*Goodwin*, 268 Ill.App.3d at 490, 205 Ill.Dec. 956, 644 N.E.2d 512), whereas the trail in this case is surrounded by wooded or undeveloped land and runs through a forest preserve. Thus, *Goodwin* is not controlling here.
>
> In addition, we reject plaintiff's contention that the trail at issue cannot be considered a "trail" because the entrance to a subdivision is located near the path. *If we accepted plaintiff's interpretation, immunity could be lost if a neighboring landowner decided to develop his property. We do not believe the legislature intended immunity to be based on the actions of a property owner different from the public entity in question.*" 337 Ill. App. 3d at 592-593 (emphasis added).

Similarly, in *McElroy* the Court made nearly identical comments to support its conclusions that (1) the *Goodwin* analysis was flawed, and (2) Section 3-107(b) applied to an improved trail with a man-made bridge:

> "We disagree with *Goodwin's* contention that a trail must be "unimproved" in order to fall under section 3–107(b). Where a statute is unambiguous, we must give effect to its plain meaning without reading into it exceptions, limitations, or conditions that the legislature did not express. *Van Milligen v. Department of Employment Security*, 373 Ill.App.3d 532, 538, 311 Ill.Dec. 422, 868 N.E.2d 1083 (2007). In this case, section 3–107(b) excepts certain "trails" and does not require that they be strictly "unimproved" trails." 384 Ill. App. 3d at 667.

By granting this petition, this Court can ameliorate this ambiguity in the case law and ensure that the inferior courts in Illinois follow the intent of the Legislature in enacting Section 3-107(b) of the Tort Immunity Act.

II. WHY THE APPELLATE COURT SHOULD BE REVERSED OR MODIFIED.

Supreme Court Rule 315(c)(5) requires a petitioner to state why the Appellate Court should be reversed or modified. Here, the Appellate court should be reversed because the Skokie Valley Bike Path, as described in the record, is a "riding trail" as contemplated by Section 3-107(b) of the Tort Immunity Act as a matter of law, and the Appellate Court below erred in reversing the Circuit Court's grant of summary judgment.

"In Illinois, governmental entities were originally immune from tort liability under the doctrine of sovereign immunity." *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 505 (Ill. 2006). In *Molitor v. Kaneland Community Unit Dist. No. 302*, 18 Ill. 2d 11 (Ill. 1959), this Court "effectively abolished governmental tort immunity for all units of local government." *Coleman v. East Joliet Fire Protection Dist.*, 2016 IL 117952, ¶ 33.

Following *Molitor*, the General Assembly enacted numerous statutes establishing immunity from tort liability to forest preserves and park districts. *See Harvey v. Clyde Park Dist.*, 32 Ill. 2d 60, 62 (Ill. 1964). In *Harvey*, this Court held those statutes arbitrary and unconstitutional, and directed the Legislature to examine the Federal Tort Claims Act and the California Government Claims Act for examples of "valid classifications for purposes of municipal tort liability." *Id.* at 67. Following *Harvey*, a committee of the Illinois Bar Association and the Chicago Bar Association convened and studied the California Act. *See Tort Liability of Local Governments and Their Employees: An Introduction to the Illinois Immunity Act*, 1966 Ill. L.F. 981, 985. That committee submitted a draft bill that was introduced in the General Assembly and ultimately became the Tort Immunity Act. *Id.*

"The Tort Immunity Act provides that its purpose 'is to protect local public entities and public employees from liability arising from the operation of government.'" *Coleman*, 2016 IL 117952 at ¶ 34, quoting 745 ILCS 10/1-101.1. "By providing immunity, the legislature sought to prevent the diversion of public funds from their intended purpose to the payment of damage claims." *DeSmet*, 219 Ill. 2d at 505, citing *Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 490 (Ill. 2001) and *Bubb v. Springfield School Dist. 186*, 167 Ill. 2d 372, 378 (Ill. 1995).

The primary rule of statutory construction when construing an immunity provision is to ascertain and give effect to the intent of the legislature. *See DeSmet*, 219 Ill. 2d at 510. The Courts are not free to read exceptions, limitations, or conditions into an immunity provision that the legislature did not express. *Id.* "A court should construe a statute, if possible, so that no term is rendered superfluous or meaningless." *Id*, citing

People v. Maggette, 195 Ill. 2d 336, 350 (Ill. 2001). Finally, "[i]f a statute, as enacted, seems to operate in certain cases unjustly or inappropriately, the appeal must be to the General Assembly, and not to [the] court[s]." *Id.*

In this case, the Appellate Court below read limitations into Section 3-107(b) that are not expressed in the statutory text, rendering it largely meaningless, effectively ignoring the intended purpose of the Tort Immunity Act as a whole, which, as noted above is to prevent the payment of damage claims.

Noting that the word "trail" is not defined in the Tort Immunity Act, the Appellate Court below relied upon the Webster's Third New International Dictionary (1981) definition of "trail" as a "marked path through a forest or mountainous region." (Op. ¶ 29). The Appellate Court first used this definition of "trail" in *Brown*, 284 Ill. App. 3d at 1101, and has referred back to it in each case in which it has analyzed Section 3-107(b). As there are no "mountainous regions" in Illinois, the Appellate Court's reliance on this definition has effectively limited immunity under Section 3-107(b) to "a marked path through a forest." This limitation is not expressly found in the statute, and has the effect of rendering the immunity meaningless to any local government entity except Forest Preserve Districts. If the legislature intended to limit immunity under Section 3-107(b) to hiking, riding, fishing or hunting paths that run through a forest, it could have clearly and simply done so. However, the Legislature's use of the word 'trail' indicates that it intended no such limitation. Thus, the Appellate Court's use of this extremely narrow definition of "trail" in this case to extrapolate its plain and ordinary meaning was erroneous.

As noted above, the Tort Immunity Act was based on the California Government Claims Act. Cal. Code Section 810 et seq. The California Government Claims Act contains an analog to Section 3-107(b) of the Tort Immunity Act in Section 831.4(b) which provides immunity to any public entity for an injury caused by the condition of "any trail used for [fishing, hunting, camping, hiking, riding...]." Similarly to the Tort Immunity Act, the word "trail" is not defined in the California Government Claims Act. The California Court of Appeal has defined "trail" as "'a marked or established path or route....'" citing Webster's Collegiate Dictionary (10th ed. 1995), and noted that the words "'trail' and 'path' are synonymous" citing Rodale, The Synonym Finder (1978) Rodale Press, Inc., p. 1249. *Carroll v. County of Los Angeles*, 60 Cal. App. 4th 606, 609 (Cal. App. 2nd 1997). Under this definition of trail, the California Court of Appeal held that a paved path running adjacent to the beach, homes and sidewalks and designated as a bicycle path was a trail for purposes of absolute immunity. *Id.* Similarly, in *Farnham v. City of Los Angeles*, 68 Cal. App. 4th 1097 (Cal. App. 2nd 1999), the Court held that any "Class I Bikeway," i.e., any bike path or shared use path "which provide[s] a completely separated right-of-way designated for exclusive use of bicycles and pedestrians with crossflows by motorists minimized," (Cal. Code Section 890.4(a)) is a trail as contemplated by the absolute immunity statute.

In addition to the definitions of trail used by the Illinois Appellate Court and the California Court of Appeal, the Webster's New World College Dictionary, Fourth Edition (2002) defines "trail" as "a path or track made by repeated passage or deliberately blazed; a paved or maintained path or track, as for bicycling or hiking."

Unlike the definition used by the Appellate Court below, use of either the California Court of Appeal's definition or the Webster's New World College Dictionary definition would not insert any unexpressed limitation to the immunity provided in the statutory text of Section 3-107(b) and would better reflect the intent of the Legislature in its drafting. Frankly, the conclusion that the Illinois Legislature intended to define 'trail' as limited to areas in forests or mountainous regions is absurd, when no mountainous regions exist in our State, and the Appellate Court decisions that employ this definition remain silent as to how and why this undoubtedly narrow definition was chosen amongst other more reasonable options. Further, these definitions better effectuate the purpose of the Tort Immunity Act, namely, to prevent the diversion of public funds from their intended purpose to the payment of damage claims, rather than effectively limiting immunity to only a narrow class of local public entities, i.e., Forest Preserve Districts. As the Court thoughtfully explained in *Montenegro v. City of Bradbury*, 215 Cal. App. 4th 924, 932 (Cal. App. 2nd 2013):

> "ensuring immunity for dangerous conditions on recreational trails of all kinds encourages public entities to open their property for public recreational use. The actual cost of litigation over injuries suffered by the multiple recreational users of urban bicycle paths, or even the specter of it, might well cause cities or counties to reconsider allowing the operation of a bicycle path, which after all, produces no revenue. No doubt it is cheaper to build fences and keep the public out than to litigate and pay three, four, five or more judgments each year in perpetuity. But that would deprive the public of access to recreational opportunities. If public entities cannot rely on the immunity for recreational trails, they will close down existing trails and perhaps entire parks where those trails can be found."

Using either the California Court of Appeal definition of "trail" or the Webster's New World College Dictionary definition of "trail" to extrapolate the word's plain and ordinary meaning, the Skokie Valley Bike Path is a clearly a "trail" a contemplated by Section 3-107(b), and as such, the City of Highland Park remains entitled to immunity for any injuries to Plaintiff caused by any dangerous conditions upon it.

CONCLUSION

For the reasons stated above, Petitioner CITY OF HIGHLAND PARK prays that this Court grant it leave to appeal from the Appellate Court's judgment reversing the trial court's grant of its Motion for Summary Judgment, and reverse the judgment of the Appellate Court.

Respectfully submitted,

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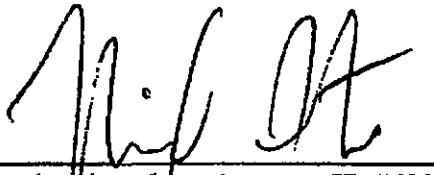
CERTIFICATE OF COMPLIANCE

I certify that the foregoing **PETITION FOR LEAVE TO APPEAL FROM THE APPELLATE COURT TO THE SUPREME COURT OF ILLINOIS PURSUANT TO RULE 315** conforms to the requirements of Rules 315(d). The length of this Petition, excluding only the Appendix, is 18 pages.



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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys of record herein, certifies that the original and twenty (20) copies of the foregoing **CITY OF HIGHLAND PARK'S PETITION FOR LEAVE TO APPEAL FROM THE APPELLATE COURT TO THE SUPREME COURT OF ILLINOIS PURSUANT TO RULE 315** was filed with the Clerk of the Supreme Court of Illinois, and three (3) copies thereof were served upon the following attorneys of record, by depositing the same in the U.S. Mail, first-class postage prepaid on the 28 day of October, 2016:

Peter F. Higgins, Esq.
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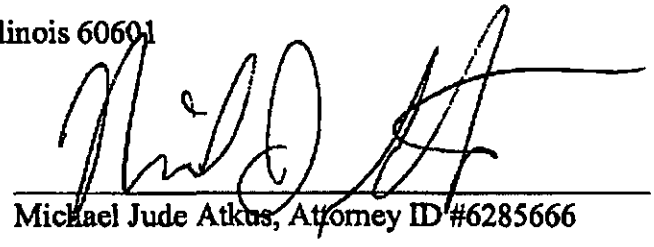

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APPENDIX TO THE
PETITION FOR LEAVE TO APPEAL
FROM THE APPELLATE COURT TO THE SUPREME COURT OF ILLINOIS
PURSUANT TO SUPREME COURT RULE 315

2016 IL App (2d) 160035
No. 2-16-0035
Opinion filed September 23, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KATHY CORBETT, Plaintiff-Appellant, v. THE COUNTY OF LAKE and THE CITY OF HIGHLAND PARK, Defendants (The City of Highland Park, Defendant-Appellee).	)	Appeal from the Circuit Court of Lake County. No. 14-L-493 Honorable Christopher C. Starck, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court, with opinion. Justices Hutchinson and Burke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Kathy Corbett, was seriously injured while riding her bicycle on the Old Skokie Bike Path in Lake County. She filed this action against defendants, the County of Lake (County) and the City of Highland Park (City), alleging that they were liable for defects in the path that caused her accident. The trial court granted both defendants summary judgment (735 ILCS 5/2-1005(c) (West 2014)), based on the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/1-101 *et seq.* (West 2012)). Plaintiff appeals only the judgment in favor of the City, arguing that the trial court erred in holding that the City was

immune from liability because, as a matter of law, the bicycle path was a "riding trail" within the meaning of section 3-107(b) of the Act (745 ILCS 10/3-107(b) (West 2012)). We reverse the judgment in favor of the City, and we remand.

¶ 2 We summarize the facts pertinent to this appeal. Plaintiff's complaint alleged as follows. On August 21, 2013, and at all other pertinent times, defendants controlled and maintained that part of the path within Highland Park and specifically the section of the path running parallel to Skokie Valley Road (U.S. Route 41) in between the intersections with Old Deerfield Road and Park Avenue West. By agreement with the County, the City was responsible for routine maintenance of the path, including repairing the pavement. Before August 21, 2013, defendants were on notice that weeds and other vegetation were growing through the asphalt, making portions of the path broken, bumpy, and elevated. Defendants were willfully and wantonly indifferent to the danger. On August 21, 2013, plaintiff, part of a group of cyclists riding together, rode her bicycle over a defective area and was thrown off. She hit the ground and was severely injured.

¶ 3 The City's answer raised the affirmative defense of immunity under section 3-107(b) of the Act, which reads, "Neither a local public entity nor a public employee is liable for an injury caused by a condition of *** [a]ny hiking, riding, fishing or hunting trail." 745 ILCS 10/3-107(b) (West 2012). The City later moved for summary judgment, based on section 3-107(b) of the Act. The City noted that this section provides absolute immunity, even as to willful and wanton conduct. The City then argued that, under the limited case authority that exists on the meaning of "riding trail" (which the Act does not define), the bike path was one.

¶ 4 The City's motion reasoned as follows. In *Brown v. Cook County Forest Preserve*, 284 Ill. App. 3d 1098, 1101 (1996), the First District held that the bicycle path on which the plaintiff

was injured was a "riding trail," because it was commonly used by cyclists and was "designed to provide access for bicyclists to the natural and scenic wooded areas" around Saulk Lake. The court held that it made no difference that the path was paved. *Id.* In *McElroy v. Forest Preserve District of Lake County*, 384 Ill. App. 3d 662 (2008), and *Mull v. Kane County Forest Preserve District*, 337 Ill. App. 3d 589 (2003), this court held that the bicycle paths at issue were riding trails per section 3-107(b). In *McElroy*, this court emphasized (according to the City's motion) that the path had been built for the use of riders and enabled them to enjoy scenery and wildlife. *McElroy*, 384 Ill. App. 3d at 669. In *Mull*, this court stressed (according to the City's motion) that, although the path ran through some developed areas, it was surrounded by wild grasses and shrubs. *Mull*, 337 Ill. App. 3d at 592.

¶ 5 Here, the City's motion argued, the depositions of plaintiff and other people established that the bike path was a "riding trail." It was intended for recreational bicycling; surrounded by shrubs, trees, and wild grasses; separated from residences and commercial businesses; and set back from the roadway. "Most compelling," plaintiff and her fellow riders called it "the 'bunny trail' because of the bunnies that were regularly present along the route."

¶ 6 The City's motion attached several exhibits, the pertinent parts of which we summarize. In her deposition, plaintiff testified that the southern end of the part of the path at issue was the intersection with Old Deerfield Road, which has two lanes. At the intersection, there is a stop sign for bicyclists on the path but not for vehicles on the road. On August 21, 2013, plaintiff was with a group with whom she regularly rode.

¶ 7 Plaintiff testified that, just before the accident, the group was riding south toward the intersection. About one-tenth of a mile north of the stop sign at the intersection, the person two places ahead of her, Hassan Syed, hit a bump and lost control of his bicycle. Syed crashed, and

his bike was turned sideways. The rider immediately in front of plaintiff was able to veer off. However, plaintiff had no place to go; she rode over Syed and his bicycle. As a result, she was thrown off her bike, rose into the air, and fell hard onto the paved surface. Plaintiff did not actually see Syed hit a bump, but he or another rider told her about it later.

¶ 8 Opposing counsel asked plaintiff whether the area of the accident was "surrounded by shrubs" and "wild grasses"; whether it was "separated from residences" and "commercial businesses"; and whether it was "set back from the highway." Plaintiff answered each question, "Yes." Plaintiff also testified that her accident occurred "just north of Old Deerfield Road on the bunny trail. The bike path. We call it the bunny trail because they have a lot of bunnies on it."

¶ 9 Yves Robaud, who was riding with plaintiff and the others on August 21, 2013, testified in his deposition as follows. Trees line both sides of the path. Asked whether the stretch where the accident occurred was "separated *** from residences and commercial businesses" and "set back from the highway," Robaud responded, "Yes." The accident occurred perhaps 200 yards north of the stop sign. Robaud's description of the accident was consistent with plaintiff's; he had been in between Syed and plaintiff and had seen Syed fall directly in front of him. Robaud rolled over Syed's legs and turned around to see plaintiff lying on the ground, in pain.

¶ 10 In his deposition, Syed testified consistently with plaintiff and Robaud about the accident. He stated that there were shrubs on both sides of the path. He also stated, as did plaintiff and Robaud, that the area of the path where the accident occurred was separated from residences and commercial businesses and set back from the highway. He added, "We call [the area of the path where the accident occurred] a bunny path." This was "[b]ecause there are a lot of bunnies running around there," although on the day of the accident "there was no bunny."

¶ 11 In his deposition, John Stevens, a member of plaintiff's group on the day of the accident, testified that the path was about six feet wide, paved with asphalt, and lined with some type of growth most of the way. The vegetation included hedges and bushes and a small amount of grass. As far as he knew, the path was separated from commercial businesses and any outside traffic (*i.e.*, by those other than bikers and walkers).

¶ 12 Plaintiff responded to the City's motion for summary judgment. She argued that, under the case law, the stretch of the path at issue cannot be considered a riding trail, as it runs through a developed area of Highland Park, not through a forest or a mountainous region. The path is sandwiched between U.S. Route 41 less than a block to the east and railroad tracks less than a block to the west. There are commercial buildings on both sides of the path, and many of the businesses have cyclone fences that abut the path, with industrial materials stacked up immediately behind the fences. Also, large utility poles for Commonwealth Edison, which owns the right-of-way, line the entire length of the path, and numerous power lines are suspended overhead. The path also bypasses Buckthorn Park, which the City owns. Further, the area of the accident intersects with Old Deerfield Road, a busy city street.

¶ 13 Plaintiff's response attached her affidavit. She stated as follows. She was familiar with the bike path, including the accident scene. The path does not go through a forest or a mountainous region. Some large bushes and some grass line the path, but there are no trees in the area of the accident. The path also passes by Buckthorn Park. Large utility poles line the entire path, with multiple power lines overhead. There are areas where businesses stack materials against fences to the side of the path. At the location of the accident, business buildings butt up against the path and several parking lots are nearby. In the area of the accident,

a cyclone fence abuts the east side of the path, and the highway and the railroad tracks are less than a block from the path.

¶ 14 Plaintiff's affidavit attached photographs in support of most of her statements about the path. The first is a Google aerial photograph with "Buckthorn Park" printed adjacent to the path. The second is a shot of a bicyclist riding on the path, with utility poles and overhead wires on either side; shrubs are on one side of the path, while the other edge is mostly grass. The third shows a stretch of the path with shrubbery and a utility pole on one side, a cyclone fence with industrial pipe stacked up behind it on the other side, and utility poles in the background. The fourth photograph shows the intersection of Old Deerfield Road (which is labeled) and the path; utility poles and wires stretch across the road and line the path in the background. There are buildings a short distance to one side of the path and a parking lot a few feet from the other side. The fifth photograph is a Google aerial view labeled "1495 Old Deerfield Road"; it also identifies the path and several business establishments that are located either between the path and the railroad tracks or between the path and Old Skokie Valley Road. The sixth photograph, also from Google and labeled "1452 Old Deerfield Road," identifies that road and shows what plaintiff's affidavit identified as parking lots located a few feet to the east of the path. The seventh photograph, a Google aerial view of the general area, identifies numerous business establishments on either side of the path. The final photograph shows a sign identifying the path and a stretch of the path, including the grass borders with intermittent shrubbery and utility poles on both sides.

¶ 15 Plaintiff's response also attached the affidavit of Angus Duthie, who stated as follows. He was familiar with the path and the area of plaintiff's accident, having himself hit a bump and crashed on July 9, 2013, about 100 yards north of Old Deerfield Road. The path does not go

through a mountainous or wooded region. There are some large bushes and grass but no trees in the area of his crash. In other respects, Duthie's affidavit repeated plaintiff's statements about the path and the surrounding area and attached copies of the same photographs.

¶ 16 The City filed a reply to plaintiff's response. The reply discussed the case law that both parties had cited. The City stressed that the decisions of neighboring landowners to develop their properties did not dispose of whether the path was a "riding trail"; the focus, it maintained, should be on the character of the path itself. The City thus contended that the " '[G]oogle images' " of the surrounding areas were of little evidentiary value. It did not, however, contend that they were improper or would be inadmissible as evidence.

¶ 17 The trial court granted both defendants summary judgment. It held that the County was immune under section 3-106 of the Act (745 ILCS 10/3-106 (West 2012)), which requires proof of willful and wanton conduct to impose liability on a local public entity for injury caused by conditions of public property that is used for recreational purposes. As noted, plaintiff does not challenge this ruling. The court also held that the City was immune, based on section 3-107(b). The court did not explain its ruling. Plaintiff timely appealed.

¶ 18 On appeal, plaintiff argues that the grant of summary judgment to the City was error, because the path is not a "riding trail" (see 745 ILCS 10/3-107(b) (West 2012)) as that term has been construed by Illinois courts. Plaintiff reasons that several opinions have adopted a dictionary definition of the term, under which the path, at least in the vicinity of her accident, does not qualify as a trail. For the following reasons, we reverse the grant of summary judgment to the City and remand the cause.

¶ 19 Summary judgment is proper when the pleadings, depositions, affidavits, and other matters on file establish that there is no genuine issue of material fact and that the moving party

is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). Our review is *de novo*. *People ex rel. Director of Corrections v. Booth*, 215 Ill. 2d 416, 423 (2005).

¶ 20 This appeal hinges on (1) the definition of the term "riding trail" in section 3-107(b) of the Act; and (2) its application to this case. The construction of a statute is, of course, a question of law, which we review *de novo*. *Hawes v. Luhr Brothers, Inc.*, 212 Ill. 2d 93, 105 (2004). Because the Act does not define the term, our appellate courts have taken up the task. We turn to what they have said.

¶ 21 In *Goodwin v. Carbondale Park District*, 268 Ill. App. 3d 489 (1994), the plaintiff was injured when his bicycle collided with a tree that had fallen across a paved bike path that went through a city park. *Id.* at 490. The city of Carbondale owned the property and leased it to the defendant, requiring that it be used " 'exclusively for playgrounds, recreational, open space, non-autoways, and public park purposes.' " *Id.* The city also agreed to " 'construct non-autoways for the use of pedestrians, bicycles and wheelchairs on the property.' " *Id.* at 491. The plaintiff filed an action sounding in both negligence and willful and wanton conduct. The trial court dismissed his complaint, holding in part that the defendant was immune under section 3-107(b) of the Act because the path was a riding trail. *Id.* at 490.

¶ 22 The appellate court reversed the dismissal of the count alleging willful and wanton conduct, holding that "the paved bike path located in a developed city park" was not a riding trail. *Id.* at 492. The court held more broadly that section 3-107(b), which created absolute immunity, even for willful and wanton conduct, was intended to apply to "unimproved property which is not maintained by the local governmental body and which is in its natural condition with obvious hazards as a result of that natural condition." *Id.* at 493. The court continued:

> "Included in section 3-107(b) are unimproved hiking, riding, fishing or hunting trails in undeveloped recreational areas that remain in their natural condition. Absolute immunity is extended for injuries sustained on these types of property because of the burden in both time and money if the local governmental entity were required to maintain these types of property in a safe condition. Furthermore, requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting. We are reminded that the Act is in derogation of the common law and must be strictly construed against a finding of immunity." *Id.*

The court concluded that, given this reasoning, the legislature did not intend section 3-107(b) to include a paved bike path within a developed city park as a riding trail. *Id.* at 493-94.

¶ 23 In *Brown*, the appellate court affirmed a grant of summary judgment based on a holding that section 3-107(b) immunized the defendant from liability for an injury that the plaintiff suffered when he hit a bump and fell off his bicycle while riding on a bicycle path in the Saulk Trail Woods Forest Preserve. *Brown*, 284 Ill. App. 3d at 1099. The court relied on a dictionary definition of "trail" as "a 'marked path through a forest or mountainous region.' " *Id.* at 1101 (quoting Webster's Third New International Dictionary 2423 (1981)). It concluded that the bike path on which the plaintiff had been riding met this definition because, as he conceded, it was "designed to provide access for bicyclists to the natural and scenic wooded areas around Saulk Lake." *Id.* It was not consequential that the path happened to have been paved. *Id.* Also, the court was not persuaded to hold for the plaintiff merely because the path was adjacent to a highway. *Id.* at 1099.

¶ 24 The court distinguished *Goodwin*, explaining that the *Goodwin* court had stressed that the bicycle path in question had "traverse[d] developed city land." *Id.* at 1101. In *Brown*, the area in

which the plaintiff was injured was, by his own description, " ' a forest,' " not the type of developed property that had been at issue in *Goodwin*. *Id.*

¶ 25 In *Mull*, this court reversed a judgment for a bicyclist who was injured when she fell while riding on a forest-preserve bicycle path. The path traversed 17 miles of the forest preserve, and the area of the plaintiff's fall was about 50 yards west of a bridge. *Mull*, 337 Ill. App. 3d at 589-90. This court adopted the dictionary definition of "trail" that *Brown* had employed. *Id.* at 591-92. We then held that the case was essentially similar to *Brown*; thus, that the bicycle path was adjacent to a road was not dispositive. *Id.* at 592. Also, that the entrance to a subdivision was near the path was not crucial: a preexisting immunity ought not be lost merely because "a neighboring landowner decide[s] to develop his property." *Id.* at 592-93. What was crucial was that the path was "surrounded by wooded or undeveloped land and [ran] through a forest preserve." *Id.* at 592.

¶ 26 Finally, there is *McElroy*, in which this court held that a path located within a 1225-acre forest preserve was a riding trail per section 3-107(b). The path was 5½ miles long, had bridges and boardwalks, and was open to hikers, bicyclists, and cross-country skiers. *McElroy*, 384 Ill. App. 3d at 663. Ronald McElroy was injured when he rode his bicycle from the gravel trail up a wooden ramp and onto an elevated wooden bridge and fell off the other end of the bridge. *Id.* This court's opinion addressed, in part, a certified question: whether the wooden bridge was part of a hiking or riding trail, per section 3-107(b). *Id.* at 666.

¶ 27 Noting that the Act is in derogation of the common law and must be construed strictly (*id.*), we nonetheless departed from *Goodwin* insofar as it held that a path must be " 'unimproved' " to qualify as a "trail" under section 3-107(b) (*id.* at 667 (quoting *Goodwin*, 268 Ill. App. 3d at 493)). We reasoned that this qualification had no basis in the plain language of

the section. *Id.* Nonetheless, we endorsed the dictionary definition of "trail" that was adopted in *Brown* and then *Mull*. We explained:

> "[S]ection 3-107(b) excepts certain 'trails' and does not require that they be strictly 'unimproved' trails. The plain and ordinary meaning of the word 'trail' is a ' " 'marked path through a forest or mountainous region.' " ' [Citations.] As defendant points out, rarely if ever is a 'riding trail' found in nature without any improvements to make the trail accessible and safe to the public." *Id.*

We noted that the plaintiffs did not dispute that the gravel portions of the path were "in a natural area and were to be used for hiking and riding." *Id.* Thus, these portions, at least, qualified as a "trail" under section 3-107(b). The contested issue was whether the manmade bridge was part of the "trail." *Id.* We held that it was. We reiterated the dictionary definition of "trail" employed in *Brown* and *Mull*. We explained that the gravel path itself was a "trail" because it went through a "natural area" (*id.* at 669), *i.e.*, a "forest" (745 ILCS 5/3-107(b) (West 2004)). We noted that forests and mountainous regions often include rivers, streams, or wetlands, making bridges necessary to enable users to enjoy these natural areas. *Id.* Thus, because the bridge was an integral part of a "trail," McElroy's injury was allegedly caused by a defective condition that was subject to section 3-107(b). *Id.*

¶ 28 We find the preceding opinions persuasive and sensible. For that reason, and in the interest of *stare decisis*, we follow them insofar as they are consistent. We adhere to our statement in *McElroy* that a "trail" need not be wholly unimproved to qualify under section 3-107(b). We also adhere to the statements that a path need not be unpaved to qualify as a "trail" and that the character of a path as a "trail" is not automatically defeated by the existence of any

development in the surrounding area. To this extent, we do not construe section 3-107(b) as narrowly as some have urged.

¶ 29 Nonetheless, the case law that we follow does require that, to be within section 3-107(b), a path not only be used by bicyclists (or hikers or both) but be located within a " 'forest or mountainous region' " (*Brown*, 284 Ill. App. 3d at 1101 (quoting Webster's Third New International Dictionary 2423 (1981)); see also *McElroy*, 384 Ill. App. 3d at 669; *Mull*, 337 Ill. App. 3d at 592). As a matter of law, this restriction defeats the City's assertion that the path is a riding or hiking trail. No contention has been made that the path is located in a mountainous region (mountains being scarce in Lake County). No serious contention can be made that the path is located in a forest; no reasonable person who views the photographs of the path and its surroundings, or even reads their descriptions by those who have seen them, would describe those surroundings as a forest. The path is bordered by narrow bands of greenway that sport some shrubs and a few trees; these narrow bands are surrounded by industrial development, residential neighborhoods, parking lots, railroad tracks, and major vehicular thoroughfares (to the east *and* south of the area of the accident). The case for considering the path a riding trail would not succeed even if utility poles could be considered trees with power lines for branches.

¶ 30 Although the presence of some development in the area of a path does not *per se* mean that the path is not a "trail," the presence of industrial and residential development *all around* a path negates any conclusion that it is located within a "natural and scenic wooded area[ ]" (*Brown*, 284 Ill. App. 3d at 1101) or that it is "surrounded by wooded or undeveloped land" (*Mull*, 337 Ill. App. 3d at 592). A forest preserve is a "forest," even with a moderate degree of improvement within and without. An industrial/commercial/residential area is not a forest because it contains narrow strips of green space on which a few trees stand. The location of the

path in this case is wholly different from the forest preserves in *Brown*, *Mull*, and *McElroy*, which were vast areas that were for the most part kept in their natural state for those who sought recreation in such a relatively wild setting. The path is in even less of a natural state than the city park in *Goodwin*. The people who use the path are interested in recreation, but there is no reason to think that they use it to feel reconnected with wild nature as they ride along and take in a vista of power lines, parking lots, warehouses, cyclone fences, stacks of industrial pipes, and utility poles, towers, and wires.

¶ 31 The frequent appearance of bunnies on the trail does not, in our judgment, call the foregoing analysis into question.

¶ 32 We note further that, aside from the definitional obstacles to calling the path a riding trail, the underlying purpose of section 3-107(b)'s grant of absolute immunity, even for willful and wanton conduct, is not consistent with the trial court's result here. We agree with the *Goodwin* court that behind the categorical grant of immunity is the recognition of "the burden in both time and money if the local governmental entity were required to maintain these types of property in a safe condition" and that "requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting." *Goodwin*, 268 Ill. App. 3d at 493. These considerations do not apply to a bicycle or hiking path in the midst of an easily accessible developed area. Indeed, the City would not even be a party to this appeal had it not found it manageable to take on the burden of maintaining the path in a safe condition.

¶ 33 For the foregoing reasons, we hold that the trial court erred in holding that the path is a riding trail, thus triggering the absolute immunity provided by section 3-107(b) of the Act. The grant of summary judgment for the City is reversed, and the cause is remanded. Of course, as

plaintiff has not appealed the grant of summary judgment for the County, that judgment remains intact.

¶ 34 Affirmed in part and reversed in part; cause remanded.

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

January 25, 2017

Mr. Michael Jude Atkus
Knight, Hoppe, Kurnik & Knight, Ltd.
5600 North River Road, Suite 600
Rosemont, IL 60018

No. 121536 - Kathy Corbett, respondent, v. The County of Lake et al. (The City of Highland Park, petitioner). Leave to appeal, Appellate Court, Second District.

The Supreme Court today ALLOWED the petition for leave to appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

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STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF LAKE

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT

KATHY CORBETT
VS
COUNTY OF LAKE, AN ILLINOIS MUNICIPAL CORPORATION, AND THE CITY OF HIGHLAND PARK, AN ILLINOIS MUNICIPAL CORPORATION

Case Number 2014L000493

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