

IN THE DISTRICT COURT OF DODGE COUNTY, NEBRASKA

PAMELA S. KALISEK,)
)
 Plaintiff,)
)
 vs.)
)
 DONALD CHAPIN and GALE)
 CHAPIN, husband and wife, and)
 THE CITY OF FREMONT,)
 NEBRASKA, a Municipality,)
)
 Defendants.)

CASE NO. CI10-138

O R D E R

This matter came before the Court on the Defendant Donald Chapin's Motion for Summary Judgment. A hearing was held on April 5, 2011 in the District Court of Dodge County, Nebraska. Present at the hearing were the Defendants Donald and Gale Chapin through their attorney, Patrick Cooper; Defendant City of Fremont appeared through its attorney, Robert Lannin and the Plaintiff appeared through her attorney, Thomas Thomsen.

Evidence was received on the record and argument was made by all counsel. Counsel for the Defendants Mr. and Mrs. Chapin, submitted a brief in support of their Motion for Summary Judgment prior to the hearing.

The Court has reviewed the Motion for Summary Judgment, all documents contained in the Court file, and the evidence submitted by the parties at the

hearing. Further, the Court has considered the argument of counsel including the Defendants' brief.

In reviewing the Fremont City Ordinance Section 8-404 it appears that the City of Fremont (hereafter City) has placed a requirement by ordinance that the City submit written notice to a land owner in order to shift or transfer liability for a defective public sidewalk located adjacent to that land owner's property. The relevant ordinance indicates that only after the City has placed the land owner on written notice of the defective or dangerous condition can any duty related to the public sidewalk shift to the adjacent land owner. Further, the Court has considered Neb. Rev. Stat. Section 16-662 and the relevant Nebraska case law regarding this issue.

The Court is persuaded by Dean v. Yanke, 226 Neb. 820 (2003) and Klapperich v. Hollers, WL 120274 Neb. App. (1993), which hold that a property owner owes no duty to an injured party wherein a municipality did not follow the notice provision contained in the city ordinance and thus the duty for said liability did not shift to the land owner.

WHEREFORE, the Court finds that there is no dispute of material fact concerning the issue of liability of the Defendants, Donald and Gail Chapin. The Chapins did not owe a duty to the Plaintiff regarding the sidewalk in question at

the time of the alleged injury. As such, the Court finds that the Defendants Donald and Gail Chapin's Motion for Summary Judgment as against the Plaintiff is hereby granted. The Plaintiff is given 15 days to amend her Complaint to reflect this decision and the remaining Defendant, City of Fremont, is granted 15 days thereafter to further plead.

IT IS SO ORDERED.

Signed and dated this 20th day of April, 2011.

BY THE COURT:



GEOFFREY C. HALL, DISTRICT JUDGE