Youth's Injuries from Fall Not the Fault of City Matthew Pierce and Robert Pierce v. City of Hamilton

Matthew Pierce and Robert Pierce v. City of Hamilton, 2013 ONSC 6485 & 7777

This claim involved an action for damages arising from a fall in a wooded area on a dark night. It occurred in a park owned by the City of Hamilton. The plaintiff, Matthew Pierce, had been walking with friends along a trail when he decided to venture off on his own where he fell into a deep ravine and sustained serious injuries.

Matthew's father, Robert, made a claim under the *Family Law Act*, R.S.O. 1990, c. F.3, for loss of guidance, care and companionship while his son was healing from his injuries.

Facts

On September 30, 2005, 17-year-old Matthew Pierce was visiting a friend, Jeff Matheson, in Hamilton along with four other friends from out of town. They had spent some time at Mr. Matheson's house and then went to a restaurant before deciding to visit a park which is located near a lookout point for the Niagara Escarpment.

At around 1:45 a.m., on October 1, 2005, Jeff Matheson drove his friends to Scenic Drive Park. This is a four-acre park located between Scenic Drive and the Niagara Escarpment. At the park there is a small parking lot, a footpath that follows the road, two grassy fields, a wooded area and the lookout point.

Jeff Matheson led his friends along 130 metres of the Scenic Drive Side Trail and then into a grassy field which borders the wooded area of the park. None of the people were carrying flashlights and the area was very dark because there were no lights at or near the wooded area. They then walked along a dirt path into the woods for about 95 metres when they reached the lookout point.

On the return trip to the parking lot, Mr. Matheson decided to take a different route. Mr. Pierce was walking at the back of the group and decided not follow his friends anymore. He continued to walk on a path that he thought would lead him back to the grassy field and then the 3.5 to 4.5 metres to the bottom. The ravine was approximately 3 to 4.5 metres wide. The plaintiff shouted out for help and his friends found him within minutes. One of his friends called 911 and ambulance attendants and firefighters attended to treat him and remove him from the ravine.

The plaintiff sustained a comminuted fracture to his left femur, a fracture to the scaphoid bone in his left wrist and various lacerations. He required surgery to his left leg with the insertion of a metal rod that was locked in place with screws.

Issues

1. Was the City liable for the plaintiffs' damages?
2. If so, was the plaintiff, Matthew Pierce, contributorily negligent?

Law

The plaintiffs argued that the standard of care for the City with respect to the premises is required under the *Occupiers' Liability Act* (OLA), Section 3 (1) which reads as follows:

"3 (1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reason-able to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises."

However, the City submitted in their defence the argument that Matthew Pierce willingly assumed all risks when entering the premises. That lesser standard of care is found under the *Occupiers' Liability Act*, Section 4 (1) which reads as follows:

"4 (1) The duty of care provided for in subsection 3 (1) does not apply in respect of risks willingly assumed by the person who enters on the premises, but in that case the occupier owes a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property."

Also in Section 4(3): "a person who enters the types of premises listed in s. 4(4) shall be deemed to have willingly assumed all risks associated with the premises and shall be subject to the standard of care set out in s. 4(1)."

The Judge noted that Section 4(3)(c) applied because the plaintiff "entered the premises for the purpose of a recreational activity; he paid no fee for entry; and he was not being provided with living accommodations by the City. Therefore, by operation of the OLA Matt will be deemed to have willingly assumed all risks associated with these premises if the wooded area in which Matt fell is included in the types of premises listed in s. 4(4)."

The City had also relied upon section 4(4) (a) and (f) which are set out as follows:

"4(4) The premises referred to in sub-section (3) are,

(a) a rural premises that is,

(i) used for agricultural purposes, including land under cultivation, orchards, pastures, woodlots and farm ponds,

(ii) vacant or undeveloped premises,

(iii) forested or wilderness premises;

(f) recreational trails reasonably marked by notice as such."

Findings

The Judge noted that the park had two recreational trails and they were reasonably marked, especially the Chedoke Radial Trail. The Scenic Drive Side Trail that was being used by the group did have a sign at its start as well as blue markers along the route and there were maps available to the users of the trail. The Judge found that both trails met the test of the lower standard of care for the City as set out above in section 4(4) (f). The dirt path that the plaintiff was walking along before he fell was also considered a recreational trail even though it was not marked that way.

The City had no records of complaints from the public nor did they have knowledge of anyone falling in the ravine before this incident. The Judge also rejected the plaintiffs' assertion that the City should have conducted inspections of all of their parks because: "The City owns approximately 6,000 acres of parkland, and of that amount approximately 3,000 acres, including Scenic Drive Park, consists of land that is kept in a natural state. It would be impossible for the City to conduct inspections of all 3,000 acres of these natural areas on any regular basis."

On the issue of signage, the Judge determined that "…a specific warning sign was not warranted if the City was not aware of any specific danger." Given these findings, the Judge stated "…the failure to erect a specific warning sign

is not a breach of the City's duty." The Judge also stated that creating a specific warning sign about the uneven ground in the woods would just be "stating the obvious." The Judge also did not think there was a need for a barricade or a fence near the drop off into the ravine because it "…should be obvious to anyone entering the woods."

The Judge stated in this decision that the City took "active measures to ensure the safety of the public in the vicinity of the Niagara Escarpment." They did this by building the trail system in this area and therefore did not breach the standard of care that was expected from them.

The Judge then opined that if there was any liability to be found on the City that "…most if not all of the responsibility for Matt's injuries must be attributed to Matt's own negligence." That was because he made the decision to walk in this wooded area in the dark and should have been aware that there is a chance of uneven ground or even a deep drop-off.

The Court's Ruling

The Court concluded "…the City did not breach its duty under s. 4(1). The City is not responsible for Matt's injuries." The matter against the City was dismissed.

Later in 2013, the Court reviewed the costs being requested by the defendant. After the review, the Court awarded total costs payable of $46,274.16 to the City.

Lessons Learned

Even though this matter did not involve an occurrence in an arena, recreational facility or a playing field there are common lessons to be learned here, such as:

- Respond to complaints and keep records of them
- Maintain accident/incident reports
- Train staff/volunteers
- Have a system of inspection and maintenance
- Document all of your inspection and maintenance activities
- Post appropriate signage
- Close off or barricade areas that are considered dangerous or in need of immediate repairs

intact public entities