

2011 CarswellOnt 2166
2011 ONCA 247, 81 M.P.L.R. (4th) 175

Billings v. Mississauga (City)

*Douglas Billings, Plaintiff (Appellant) and Corporation of the City of Mississauga, Defendant
(Respondent)*

Ontario Court of Appeal

D.R. O'Connor A.C.J.O., J.I. Laskin, J.C. MacPherson JJ.A.

*Heard: March 29, 2011
Judgment: March 29, 2011
Docket: CA C52281*

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Proceedings: affirming Billings v. Mississauga (City) (2010), 75 M.P.L.R. (4th) 303, 2010 CarswellOnt 5732, 2010 ONSC 3101 (Ont. S.C.J.)

*Counsel: Paul J. Cahill, for Appellant
Scott Hamilton, for Respondent*

Subject: Public; Property; Torts; Civil Practice and Procedure

Municipal law --- Municipal liability — Negligence — Property maintenance — Miscellaneous

Sidewalks — Plaintiff pedestrian suffered serious injuries after devastating slip and fall accident on city sidewalk following major snow and ice storm — Plaintiff's action in negligence against city was dismissed — Trial judge found that city had reasonable winter maintenance snow and ice removal policy in place that required sidewalk to be cleared within 36 hours of end of winter storm, and that there was evidence as to why sidewalk maintenance was incomplete 50 hours after storm ended — Accordingly, city's response in circumstances was reasonable and was not grossly negligent — Appeal by plaintiff dismissed — Plaintiff pointed to fact that sidewalk in question remained dangerous for over 100 hours, it was not cleared within 36 hours of end of storm, and city relied exclusively on unionized workers who had no obligation to work overtime and on weekends — City's general policy with respect to snow and ice removal was reasonable one — Moreover, on days in question, its performance pursuant to policy was far from being grossly negligent — As trial judge found, storm was "extraordinary atmospheric event" — Trial judge carefully reviewed city's systems, personnel and policies for dealing with snow storms — His conclusion that city's response was "completely reasonable" was agreed with.

Torts --- Negligence — Duty and standard of care — Gross negligence

Sidewalks — Plaintiff pedestrian suffered serious injuries after devastating slip and fall accident on city sidewalk following major snow and ice storm — Plaintiff's action in negligence against city was dismissed — Trial judge found that city had reasonable winter maintenance snow and ice removal policy in place that required sidewalk to be cleared within 36 hours of end of winter storm, and that there was evidence as to why sidewalk maintenance was incomplete 50 hours after storm ended — Accordingly, city's response in circumstances was reasonable and was not grossly negligent — Appeal by plaintiff dismissed — Plaintiff pointed to fact that sidewalk in question remained dangerous for over 100 hours, it was not cleared within 36 hours of end of storm, and city relied exclusively on unionized workers who had no obligation to work overtime and on weekends — City's general policy with respect to snow and ice removal was reasonable one — Moreover, on days in question, its

performance pursuant to policy was far from being grossly negligent — As trial judge found, storm was "extraordinary atmospheric event" — Trial judge carefully reviewed city's systems, personnel and policies for dealing with snow storms — His conclusion that city's response was "completely reasonable" was agreed with.

Statutes considered:

*Municipal Act, 2001, S.O. 2001, c. 25
s. 44(9) — considered*

APPEAL by plaintiff from judgment reported at Billings v. Mississauga (City) (2010), 75 M.P.L.R. (4th) 303, 2010 CarswellOnt 5732, 2010 ONSC 3101 (Ont. S.C.J.), dismissing his action against municipality for damages arising from slip and fall accident.

Per curiam (orally):

1 *The appellant, Douglas Billings, appeals the judgment of Herold J. dated May 31, 2010, dismissing his claim against the respondent.*

2 *The appellant's claim related to injuries he suffered in a slip and fall accident on one of the respondent's sidewalks following a major snow and ice storm. The sidewalk in question had not been cleared of snow and ice within the 36 hour period following the storm referred to in the respondent's snow removal policy.*

3 *Section 44(9) of the Municipal Act, S.O. 2001, c. 25, provides that "[e]xcept in cases of gross negligence, a municipality is not liable for a personal injury caused by snow or ice on a sidewalk."*

4 *The appellant contends that the respondent's snow removal performance during and after the storm amounted to gross negligence. He points to the fact that the sidewalk in question remained dangerous for over 100 hours, that the sidewalk was not cleared within 36 hours of the end of the storm, and that the respondent relied exclusively on unionized workers (as opposed to independent contractors) who had no obligation to work overtime and week-ends (the accident happened on a Monday).*

5 *We do not accept these submissions. In our view, the respondent's general policy with respect to snow and ice removal was a reasonable one. Moreover, on the days in question its performance pursuant to the policy was far removed from being grossly negligent. As the trial judge found, the storm in April 2003 was "an extraordinary atmospheric event", a conclusion supported by the fact that Environment Canada ranked it as runner-up on its list of the top ten Canadian weather stories of 2003.*

6 *The trial judge carefully reviewed the respondent's systems, personnel and policies for dealing with snow storms. He concluded that the respondent's response to the storm was "completely reasonable". We agree.*

7 *The appeal is dismissed. The appellant shall pay the respondent's costs of the appeal fixed in the amount of \$5,000 inclusive of disbursements and applicable taxes. We direct that the appellant need not pay the amount of \$5,000 into court pursuant to the order for security for costs. Appellant's counsel undertakes to pay the \$5,000 being held in trust to the respondent.*

Appeal dismissed.

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