IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Klarentyn Morales	:	
	:	
v.	:	
	:	
County of Montgomery,	:	No. 890 C.D. 2025
Appellant	:	Submitted: September 14, 2026

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION
BY JUDGE FIZZANO CANNON FILED: November 16, 2026

The County of Montgomery (County) appeals from a June 20, 2025 Order of the Montgomery County Court of Common Pleas (Trial Court) denying the County's motion for summary judgment on a tort claim arising from a trip and fall. The Trial Court found issues of fact remained concerning whether Klarentyn Morales (Morales) may invoke either the real property or sidewalks exception to governmental immunity in her tort claim against the County. Upon review, we affirm the Trial Court's order as to the real property exception, reverse the Trial Court's order as to the sidewalks exception, and remand for entry of partial summary judgment in favor of the County on the sidewalks exception and for further proceedings consistent with this opinion.

I. Background

The First Amended Complaint (Complaint) alleged that the incident giving rise to Morales's lawsuit occurred on February 22, 2021, adjacent to a

building having an address of 35 East Airy Street in Norristown (Premises). Reproduced Record (R.R.) at 29a. The Complaint averred that the Premises were owned by one or more of the following: the County, Montgomery County Prison (Prison), John/Jane Doe #1-10, and ABC Corporation #1-10[1] (collectively, Defendants). *Id.* The County has admitted its ownership of and maintenance responsibility for the Premises. Br. of Appellant at 7-8 (citing R.R. at 40a & 94a-95a). Morales alleges that while walking on a sidewalk at the Premises, "she was caused to lose her balance, trip, stumble, and fall, thereby sustaining serious and permanent injuries . . . , due to a defective condition of the sidewalk and/or driveway, that was concealed by snow and/or ice, causing an uneven walking surface and an unsuspecting [sic] fall hazard. . . ." R.R. at 30a-31a. In her deposition, Morales testified that she fell around 10:00 a.m., that it was snowing as she was walking, and a "thin layer" of snow had accumulated. *Id.* at 56a-57a.

Morales brought a negligence action against the Defendants, alleging liability for injuries she suffered when she fell on the sidewalk on the Premises. R.R. at 29a-38a. Following discovery, the County moved for summary judgment on the basis of governmental immunity under the statute commonly known as the Political Subdivision Tort Claims Act (Tort Claims Act), 42 Pa.C.S. §§ 8541-8542. The Trial Court denied the motion, finding that questions of fact remained concerning whether immunity applied. This appeal followed.

[1] The caption of the complaint described the designations "John/Jane Doe #1-10" and "ABC Corporation #1-10" as referring to "[a]ny corporation, individual, entity or fictitious name other than the named Defendants that owned, operated, supervised, leased and/or controlled the premises and was involved in the snow removal, inspection, repair, and maintenance of the premises which is subject of this complaint." R.R. at 29a.

II. Issues

On appeal, the County presents two issues for review. First, the County asserts that the Trial Court's interlocutory order denying summary judgment was immediately appealable as a collateral order. Second, the County argues that the Trial Court committed a reversible error of law by concluding that issues of fact remain concerning the application of exceptions to the County's immunity.

III. Discussion

Our scope and standard of review of a trial court order denying summary judgment are as follows:

> We review [a] trial court's [o]rder denying [a summary judgment m]otion for an error of law or abuse of discretion. *Balentine v. Chester Water Auth.*, . . . 191 A.3d 799, 803 n.3 (Pa. 2018) (citation omitted). In reviewing a trial court's decision regarding a request for summary judgment, we note summary judgment is appropriate "only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Sellers v. Twp. of Abington*, . . . 106 A.3d 679, 684 (Pa. 2014) (quoting *Summers v. Certainteed Corp.*, . . . 997 A.2d 1152, 1159 (Pa. 2010)). Whether genuine issues of material fact exist is a question of law, and "therefore, on that question our standard of review is *de novo*. This means we need not defer to the determinations made by the lower [court]." *Weaver v. Lancaster Newspapers, Inc.*, . . . 926 A.2d 899, 902-03 (Pa. 2007) (citations omitted). We review the record, including "all pleadings, as well as any depositions, answers to interrogatories, admissions, affidavits, and expert reports, in a light most favorable to the non-moving party, and we resolve all doubts as to the existence of a genuine issue of material fact against the moving party." *Moon v. Dauphin Cnty.*, 129 A.3d 16, 19 (Pa. Cmwlth. 2015) (quoting *LJL Transp., Inc. v. Pilot Air Freight Corp.*, . . . 962 A.2d 639, 647 (Pa. 2009)).

N.N. v. Sch. Dist. of Phila., 349 A.3d 1081, 1087-88 (Pa. Cmwlth. 2025). We also observe:

> Rule 1035[.3(a) of the Pennsylvania Rules of Civil Procedure, Pa.R.Civ.P. 1035.3(a)[2]] does not require that the moving party introduce evidence on an issue on which it does not bear the burden of proof in order to have its motion granted. Additionally, the rule explicitly states that a non-moving party may not avoid summary judgment by "resting upon the mere allegations or denials of his pleading . . . ." [*Id.*] Allowing non-moving parties to avoid summary judgment where they have no evidence to support an issue on which they bear the burden of proof runs contrary to the spirit of Rule 1035[.3]. We have stated that the "mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial." *Curran v. Philadelphia Newspapers, Inc.*, . . . 439 A.2d 652, 658 ([Pa.] 1981) (citations omitted). We have a summary judgment rule in this Commonwealth in order to dispense with a trial of a case (or, in some matters, issues in a case) where a party lacks the beginnings of evidence to establish or contest a material issue.

Ertel v. Patriot-News Co., 674 A.2d 1038, 1041-42 (Pa. 1996).

A. Appealability of the Trial Court's Order

The County first contends that its appeal is properly before this Court as an appeal as of right from an interlocutory order denying a motion for summary judgment based on governmental immunity.[3] We agree.

Rule 313 of the Pennsylvania Rules of Appellate Procedure allows an interlocutory appeal as of right from a collateral order, which is an order "separable

[2] Rule 1035.3 replaced the pertinent portion of former Rule 1035, under which the cited case was decided.

[3] Morales does not address this issue in her brief.

from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost." Pa.R.A.P. 313. This Court recently concluded that an interlocutory order denying a summary judgment motion asserting governmental immunity from a tort claim is a collateral order immediately appealable as of right under Rule 313. *See N.N.*, 349 A.3d at 1087. First, this Court determined that the question of a local agency's immunity is separable from the question of its negligence. *Id.* at 1086-87. Second, we concluded that the legislature's "clear intent . . . to insulate local agencies from exposure to tort liability" and the "implications for . . . individuals' ability to sue by invoking an exception to governmental immunity under the Tort Claims Act" outweigh the efficiency interests of the final judgment rule and are, therefore, too important to be denied review. *Id.* at 1087. Finally, because "the entitlement to immunity 'is an immunity from suit rather than a mere defense to liability,'" we observed that this entitlement will be irreparably lost if a local agency must wait until the conclusion of a suit to appeal a denial of its assertion of immunity. *Id.* (quoting *West on behalf of S.W. v. Pittsburgh Pub. Schs.*, 327 A.3d 340, 343 n.6 (Pa. Cmwlth. 2024)). Accordingly, we held in *N.N.* that an interlocutory order denying a summary judgment motion asserting governmental immunity from a tort claim is a collateral order immediately appealable as of right. *Id.*

This Court's analysis and holding in *N.N.* are applicable and binding here. Therefore, we agree with the County that its appeal from the Trial Court's denial of summary judgment is properly before us.

B. Real Property and Sidewalks Exceptions to Governmental Immunity

Section 8541 of the Tort Claims Act provides that "[e]xcept as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa.C.S. § 8541. The County is a local agency and is, therefore, within the shield of Section 8541. *See* 42 Pa.C.S. § 8501; *Simko v. Cnty. of Allegheny*, 869 A.2d 571, 573 (Pa. Cmwlth. 2005).

Exceptions to the immunity provided by Section 8541 are set forth in Section 8542(b), 42 Pa.C.S. § 8542(b). These exceptions to the absolute rule of governmental immunity stated in Section 8541 "must be narrowly interpreted given the expressed legislative intent to insulate political subdivisions from tort liability." *Buffalini by Buffalini v. Shrader*, 535 A.2d 684, 688 (Pa. Cmwlth. 1987); *see also Aberant v. Wilkes-Barre Area Sch. Dist.*, 492 A.2d 1186, 1188 (Pa. Cmwlth. 1985) (observing that "the exceptions enumerated in Section 8542 should be narrowly construed"). "A claimant seeking to impose liability on a local agency has the burden of establishing . . . that the negligent act falls within one of the eight exceptions enumerated in subsection 8542(b) of the Judicial Code." *Santori v. Snyder*, 645 A.2d 443, 446-47 (Pa. Cmwlth. 1994); *see also Balletta v. Spadoni*, 47 A.3d 183, 195 (Pa. Cmwlth. 2012).

Relevant here, the exceptions allow imposition of liability on a local agency where an injury allegedly arises from "[t]he care, custody or control of real property in the possession of the local agency. . . ." 42 Pa.C.S. § 8542(b)(3)(iv). However, "[a]s used in this paragraph, 'real property' shall not include . . . (iv) sidewalks." *Id.*; *see also Reid v. City of Phila.*, 957 A.2d 232, 235 (Pa. 2008)

(observing that "[t]he legislature explicitly distinguished 'sidewalks' from 'real property'" in specifying exceptions from governmental immunity).

Liability relating to sidewalks is addressed in a separate provision allowing imposition of liability relating to sidewalks under Section 8542(b)(7), as follows:

> (7) Sidewalks.—A dangerous condition of sidewalks within the rights-of-way of streets owned by the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition. When a local agency is liable for damages under this paragraph by reason of its power and authority to require installation and repair of sidewalks under the care, custody and control of other persons, the local agency shall be secondarily liable only and such other persons shall be primarily liable.

42 Pa.C.S. § 8542(b)(7).

Here, the Trial Court concluded in its opinion pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 1925(a), that either the real property exception or the sidewalks exception was potentially applicable to allow Morales's claim. *See generally Morales v. Cnty. of Montgomery* (C.P. No. 2023-02618, filed Sept. 11, 2025) (1925(a) Op.). We agree that issues of fact remain regarding the application of the real property exception but disagree that any issue of fact remains regarding application of the sidewalks exception.

First, the Trial Court explained that its determination regarding possible application of the real property exception was based in part on a perceived question of fact whether the location of Morales's fall was properly deemed a "driveway,"

which would be subject to the real property exception, rather than a "sidewalk," which is expressly excluded from the real property exception. 1925(a) Op. at 4. Although the area in question is a public sidewalk used by pedestrians, it also could potentially be crossed by vehicles exiting to Marshall Street from the County-owned building's garage door next to the location of Morales's fall. *See* R.R. at 20a-21a, 31a, 71a, 105a, 107a & 204a-05a (photographs depicting the garage door and adjacent sidewalk); Br. of Appellant at 6-7 (same).[4] The record photographs of the location of Morales's fall show that it was in line with the rest of the sidewalk rather than on the apron of the garage door. *See* R.R. at 20a-21a, 31a, 71a, 105a, 107a & 204a-05a. However, Morales supported her argument concerning this exception with an expert report discussing the appearance of the area at issue and opining that the appearance is consistent with a driveway rather than a sidewalk. *See id.* at 238a-40a. That a sidewalk may be crossed by vehicles exiting an adjacent garage or driveway does not automatically convert the sidewalk to real property for purposes of an exception to governmental immunity. *See Riley v. Cnty. of Del.* (Pa. Cmwlth., No. 1027 C.D. 2009, filed Feb. 9, 2010), slip op. at 12-13[5] (rejecting the assertion of the real property exception to immunity and observing that the plaintiff cited no authority to support a "dual use" theory, where a municipal driveway crossed the sidewalk in the location of the plaintiff's fall). However, this is a fact-sensitive determination. Here, we conclude that Morales's expert report was sufficient to support the Trial Court's conclusion that an issue of fact remains concerning whether

[4] Although attachments to a brief are not part of the record on appeal, the cited photographs in the County's brief are merely clearer duplicates of the photographs at pages 70a and 105a of the reproduced record.

[5] Pursuant to Section 414(a) of this Court's Internal Operating Procedures, unreported opinions of this Court filed after January 15, 2008 may be cited for their persuasive value. 210 Pa. Code § 69.414(a).

the area where Morales fell is a driveway such that the real property exception to immunity applies.

Next, under the sidewalks exception to governmental immunity, a local agency may be liable in negligence where the injury allegedly resulted from "[a] dangerous condition of sidewalks within the rights-of-way of streets owned by the local agency." 42 Pa.C.S. § 8542(b)(7). We agree with the Trial Court that the sidewalks provision is inapplicable here. Although the address of the Premises is 35 East Airy Street, it is undisputed that the site of Morales's fall was the sidewalk at the rear of the Premises along Marshall Street. R.R. at 94a-95a. The record does not identify the owner of Marshall Street. However, the record does include a log of all County-owned roads, on which Marshall Street does not appear.[6] *Id.* at 191a. Morales does not point to any contradictory evidence in the record. She does not, for example, cite any real property records such as recorded deeds or rights-of-way suggesting that the County owns to the center of the street and some other entity (such as the municipality of Norristown) owns only a right-of-way. Accordingly, Morales has failed to assert a genuine question that the County is not the owner of Marshall Street. That being the case, it logically follows that the sidewalk is not within the right-of-way of a street owned by the County within the meaning of Section 8542(b)(7). Accordingly, it is immaterial whether the sidewalk at issue is within the right-of-way of Marshall Street.

As noted above, the County admits that it owns the Premises adjacent to the sidewalk where Morales fell. R.R. at 40a & 94a-95a. The County further acknowledges that as the owner of the Premises, it is responsible for maintaining

[6] The log in the record appears to have been taken from the County's website, which contains the same list: https://assets.montgomerycountypa.gov/files/2026-08/Montco%20Roads--75-Miles-%2034291%20seal.pdf (last visited November 12, 2026).

and repairing the adjacent sidewalk. *Id.* at 95a. However, the sidewalks exception does not apply to a sidewalk merely because it is adjacent to a building owned by a local agency. *See* 42 Pa.C.S. § 8542(b)(3) & (7).

We recognize that the result of this conclusion is that a local agency has no liability under the sidewalks exception for a fall on a sidewalk where, as here, the local agency owns the real property adjacent to the sidewalk but another entity owns the adjacent street. As our Supreme Court has explained, however,

> [e]ven if the legislature failed to contemplate the situation where the local agency owns the property adjacent to the sidewalk, it does not follow that the solution is for this [C]ourt to engraft language onto the legislature's definition of real property where the engrafted language runs directly contrary to the express words. Rather, the solution is to give full effect to the clear and unambiguous language . . . and urge the legislature to resolve the problem by enacting proper amendments to the statute.

Reid, 957 A.2d at 236 (formatting cleaned up).

Accordingly, the Trial Court erred in determining that there were any genuine issues of material fact regarding the County's governmental immunity regarding the sidewalks exception. The County is entitled to judgment in its favor on that issue as a matter of law.

IV. Conclusion

Based on the foregoing discussion, the Trial Court's order entering summary judgment is affirmed as to its conclusion that issues of fact remain as to whether the real property exception to immunity may apply. The Order is reversed as to its conclusion that issues of fact remain as to whether the sidewalks exception to immunity may apply. This matter is remanded to the Court of Common Pleas for the entry of partial summary judgment in favor of the County on the question of the

sidewalks exception to immunity and for further proceedings consistent with this opinion.

_____

CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Klarentyn Morales	:	
	:	
v.	:	
	:	
County of Montgomery,	:	No. 890 C.D. 2025
Appellant	:	

O R D E R

AND NOW, this 16th day of November, 2026, the June 20, 2025 Order of the Montgomery County Court of Common Pleas is AFFIRMED insofar as it concludes that issues of fact remain as to whether the real property exception to immunity may apply. The Order is REVERSED insofar as it concludes that issues of fact remain as to whether the sidewalks exception to immunity may apply. This matter is REMANDED to the Court of Common Pleas for the entry of partial summary judgment in favor of the County of Montgomery on the question of the sidewalks exception to immunity and for further proceedings consistent with the foregoing opinion.

Jurisdiction is relinquished.

_____

CHRISTINE FIZZANO CANNON, Judge