

2026 WL 2858431

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Court of Appeals of Georgia.

CITY OF ATLANTA

v.

JACOBS.

A26A0949

|

September 23, 2026

Synopsis

Background: Pedestrian brought negligence action against city after she allegedly tripped over raised metal slab protruding from sidewalk. After city's motion for directed verdict was denied and jury awarded pedestrian damages, 2025 WL 2912613, city filed motion for judgment notwithstanding the verdict (JNOV). The Superior Court, Fulton County, Rachel Ross Krause, J., denied city's motion, and city appealed.

[Holding:] The Court of Appeals, Hodges, J., held that evidence supported jury's finding that city had assumed responsibility to keep the street and sidewalk safe for travel on the state route at issue, such that city was liable for pedestrian's injuries.

Affirmed.

Procedural Posture(s): On Appeal; Judgment; Motion for Judgment Notwithstanding the Verdict (JNOV); Motion for Judgment as a Matter of Law (JMOL)/Directed Verdict.

West Headnotes (14)

[1] Appeal and Error

On appeal from the denial of a motion for judgment notwithstanding the verdict (JNOV), appellate court must determine whether, construing the evidence in a light most favorable to the party who obtained the jury verdict, there is any evidence to support the jury's verdict.

[2] Summary Judgment

When a motion for summary judgment is overruled on an issue and the case proceeds to trial and the evidence at the trial authorizes the verdict (judgment) on that issue, any error in overruling the motion for summary judgment is harmless.

[3] Summary Judgment

Appellate court would not address city's argument challenging trial court's denial of its motion for summary judgment on negligence claim brought against it by pedestrian, who allegedly tripped over raised metal slab protruding from sidewalk, given that issue was moot because evidence authorized jury verdict in favor of pedestrian; when motion for summary judgment was overruled on an issue and the case proceeded to trial and the evidence at the trial authorized the jury's verdict on that issue, any error in overruling the motion for summary judgment was harmless.

[4] Appeal and Error

Standard of appellate review of the denial of both a motion for directed verdict and a motion for judgment notwithstanding the verdict (JNOV) is the any evidence test.

[5] Appeal and Error

When reviewing the denial of motion for directed verdict or motion for judgment notwithstanding the verdict (JNOV), question before appellate court is not whether the verdict and the judgment of the trial court were merely authorized, but, rather, whether a contrary judgment was demanded.

[6] Appeal and Error

Judgment notwithstanding the verdict (JNOV) is properly granted only when there can be only one reasonable conclusion as to the proper judgment; if there is any evidentiary basis for the jury's

verdict, viewing the evidence most favorably to the party who secured the verdict, it is not error to deny the motion.

[7] Municipal, County, and Local Government 🔑

Municipalities have waived their sovereign immunity and are liable for keeping city streets and sidewalks safe for travel.

[8] Municipal, County, and Local Government 🔑

Ordinarily, public policy provides that there is no waiver of sovereign immunity and cities are immune from liability for damages. [Ga. Const. art. 9, § 2, para. 9](#); [Ga. Code Ann. § 36-33-1\(a\)](#).

[9] Municipal, County, and Local Government 🔑

Cities are liable for their neglect to perform or improper or unskillful performance of their ministerial duties. [Ga. Code Ann. § 36-33-1\(b\)](#).

[10] Municipal, County, and Local Government 🔑

When Department of Transportation (DOT) fails to maintain those portions of the state highway system lying within a municipality's corporate limits as required by law, a municipality can be held liable for such failure where the municipality agreed to perform the necessary maintenance. [Ga. Code Ann. § 32-4-93\(b\)](#).

[11] Municipal, County, and Local Government 🔑

Evidence supported jury's finding that city had assumed responsibility to keep the street and sidewalk safe for travel on the state route at issue, such that city was liable for injuries pedestrian sustained when she allegedly tripped over raised metal slab protruding from sidewalk; metal protrusion was the remnants of Department

of Transportation (DOT) sign, city had notice of hazard for years before pedestrian fell and dispatched inspector who noted that sign should be replaced, but city failed to notify DOT, and statute provided that municipality is relieved of any and all liability resulting from or occasioned by defective construction of those portions of state highway system or resulting from failure of DOT to maintain such roads as required by law unless municipality constructed or agreed to perform necessary maintenance of such road. [Ga. Code Ann. § 32-4-93\(b\)](#).

[12] Municipal, County, and Local Government 🔑

Given appropriate notice, a city is liable for defects which are gradually brought about by the forces of nature, and for a defect or an obstruction created in or placed on a public street by a stranger.

[13] Municipal, County, and Local Government 🔑

Municipality is bound to keep its streets and sidewalks in a safe condition for travel in the ordinary modes, and that duty extends to state highways when a city agrees to maintain them. [Ga. Code Ann. § 32-4-93\(b\)](#).

[14] Municipal, County, and Local Government 🔑

When municipality is under statutory duty to maintain a street, it cannot escape liability for failure to do so by reason of the failure of another political agency or third party also charged with the duty of keeping it in repair.

Attorneys and Law Firms

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Meredith Stein Watts, Emily Hornsby Nelson, Randall S. Haynes, for Appellee.

Opinion

Hodges, Judge.

*1 Mara Jacobs sued the City of Atlanta (“the City”) for negligence after she tripped over a raised metal slab protruding from a sidewalk and was injured. After a jury awarded Jacobs damages, the City moved for judgment notwithstanding the verdict (“JNOV”), which the trial court denied. The City argued that the jury’s verdict could not be sustained because the metal slab was the remnants of a fallen sign along a state route, which the Georgia Department of Transportation (“DOT”) was responsible for maintaining. The trial court, however, concluded that there was evidence that the City had assumed responsibility for maintaining the sidewalk, and was therefore liable. The City now appeals, and, for the reasons that follow, we affirm.

[1] “On appeal from the denial of a motion for judgment notwithstanding the verdict, this court must determine whether, construing the evidence in a light most favorable to the party who obtained the jury verdict, there is any evidence to support the jury’s verdict.” *Holland v. Holland*, 277 Ga. 792, 596 S.E.2d 123 (2004).

So viewed, the evidence adduced at trial showed that Jacobs was walking down a sidewalk along Ponce de Leon Avenue within the city limits of Atlanta. As Jacobs was attempting to move around a group of women on electric scooters, she tripped over a metal baseplate protruding from the sidewalk. The metal baseplate was the remnant of a road sign that had fallen years earlier. As a result of her fall, Jacobs broke her wrist in six places, necessitating surgery.

While this section of Ponce de Leon Avenue is officially a state route, a representative for the DOT asserted that the City performs maintenance on the sidewalks of that road. Two-and-a-half years before Jacobs’ fall, the City received a report that the sign at issue had fallen through its 311 service request system. The City dispatched an inspector, who noted that a “[b]ike lane ends” sign was “damaged and needs to be replaced.” The City’s inspector also found that the sign had fallen along a state route, and the matter should be forwarded to the DOT. The City, however, did not notify the DOT and took no further action to remove the base plate protruding from the sidewalk. This was despite the fact that

the City had a policy to forward such complaints to the DOT. A DOT representative confirmed that the department had no knowledge of the hazard; but if it was so notified, the department would have replaced the sign.

[2] [3] Jacobs sued the City for negligence, asserting that the City was negligent in failing to maintain a safe and hazard-free condition of the sidewalk. The City later moved for summary judgment, arguing that the sidewalk on which Jacobs fell was incontrovertibly part of the state highway system and that there was no evidence that the City had agreed to maintain it. The trial court denied the City’s motion for summary judgment, concluding that the above facts created a dispute as to whether the City accepted responsibility for the area. The case proceeded to a jury trial. After the close of Jacobs’ case, the City moved the trial court to direct a verdict in its favor, again arguing that it had no duty to maintain road signs along state routes. The trial court denied the motion, concluding again that there was some evidence that the City had an agreement with the DOT to maintain the sidewalk at issue. Following an adverse jury verdict, the City moved for JNOV, again arguing that there was no such agreement, which the trial court denied. The City appeals from the denial of its motion for directed verdict and JNOV.¹

*2 [4] [5] [6] “It is well settled that the standard of appellate review of the denial of both a motion for directed verdict and a motion for [JNOV] is the any evidence test.” *Golden Peanut Co. v. Bass*, 249 Ga. App. 224, 237(3), 547 S.E.2d 637 (2001). As such,

[t]he question before this court is not whether the verdict and the judgment of the trial court were merely authorized, but is whether a contrary judgment was demanded. A [JNOV] is properly granted only when there can be only one reasonable conclusion as to the proper judgment; if there is any evidentiary basis for the jury’s verdict, viewing the evidence most favorably to the party who secured the verdict, it is not error to deny the motion.

Id. (punctuation omitted). When placed in our proper standard of review, there was clearly some evidence to authorize the jury’s verdict, so we affirm.

[7] [8] [9] Under Georgia law, municipalities have waived their sovereign immunity and are liable for keeping city streets and sidewalks safe for travel. *City of Milton v. Chang*, 323 Ga. 810, 813, 928 S.E.2d 1 (2026). Ordinarily, public policy provides that there is no waiver of sovereign immunity and cities are immune from liability for damages. OCGA § 36-33-1(a); see also Ga. Const. of 1983, Art IX, Sec. II, Para. IX. However, cities are liable for their “neglect to perform or improper or unskillful performance of their ministerial duties[.]” *Gatto v. City of Statesboro*, 312 Ga. 164, 167, 860 S.E.2d 713 (2021); OCGA § 36-33-1(b). “And for more than a century, we have treated as one such ministerial duty the duty at issue in this case: that is, the duty to keep city streets and sidewalks safe for travel.” *Chang*, 323 Ga. at 813(2), 928 S.E.2d 1, citing *Mayor and Council of Dalton v. Wilson*, 118 Ga. 100, 103, 44 S.E. 830 (1903).

[10] The General Assembly has limited this liability, however, in cases where the roads are part of the state highway system. OCGA § 32-4-93(b). Under that statute,

[a] municipality is relieved of any and all liability resulting from or occasioned by defective construction of those portions of the state highway system ... or resulting from the failure of the [DOT] ... to maintain such roads as required by law unless the municipality constructed or agreed to perform the necessary maintenance of such road.

Id. This means that “when the DOT fails to maintain those portions of the state highway system lying within a municipality’s corporate limits as required by law, a municipality can be held liable for such failure under OCGA § 32-4-93(b) where the municipality agreed to perform the necessary maintenance.” *City of Fairburn v. Cook*, 188 Ga. App. 58, 64, 372 S.E.2d 245 (1988), disapproved of on other grounds by *Dep’t of Pub. Safety v. Ragsdale*, 308 Ga. 210, 214 n. 7, 839 S.E.2d 541 (2020).

[11] Here, the jury heard testimony that the City assumed responsibility for the maintenance along the state route at issue. In fact, the City had notice of the hazard for years before Jacobs fell and dispatched an inspector who noted that the

sign should be replaced; the City, however, failed to notify the DOT. As such, we conclude that there was some evidence to support a reasonable jury’s conclusion that the City had assumed responsibility to keep the street and sidewalk safe for travel on the state route at issue.

*3 The City does not meaningfully challenge this conclusion, asking this Court to instead read OCGA § 32-4-93(b) to require a city not only to agree to maintain the road, but also “maintain[] the specific item itself ... beyond the State’s directions and standards.” In support, the City points to OCGA § 32-2-2(a)(1), which requires the State to provide substantial maintenance activities and operations of official DOT signs. Neither party disputes the metal protrusion was the remnants of a DOT sign. Therefore, under the City’s interpretation of OCGA § 32-4-93(b), because the City did not specifically agree to maintain traffic signs, it is not liable. The City relies on this Court’s opinion in *McPherson v. City of Fort Oglethorpe*, where we concluded that because there was “uncontroverted evidence that [the] DOT had complete control and authority regarding the timing and sequence of the traffic signal, and plaintiffs failed to show any agreement by the City to maintain the traffic signal ... plaintiffs did not establish any duty of the City to maintain the traffic signal[.]” 200 Ga. App. 129, 131(1), 407 S.E.2d 99 (1991). To extend *McPherson* to the facts of this case, however, ignores the patent factual distinctions between it and the instant case, as well as over a century of precedent consistently requiring municipalities to keep their sidewalks safe for travel.

McPherson did not involve a traffic sign which was a physical hazard on a roadway or sidewalk. Instead, the allegation was “that the timing sequence on the traffic signal did not give sufficient time for pedestrians to cross[.]” 200 Ga. App. at 130, 407 S.E.2d 99. It was undisputed that the “DOT engineered, constructed, maintained and set the timing sequence for the traffic control at that intersection and that the City had no discretion or decision-making power with regard to the location, sequencing or timing of the traffic signal.” *Id.* at 130(1). In the instant case, however, the claim of negligence was not related to the functionality of the sign itself, but rather that the City allowed a metal slab to create a hazard on the sidewalk for years.

[12] Instead of looking at the character of the hazard, Georgia courts have simply concluded that a municipality “is bound to keep its streets and sidewalks in a safe condition for travel in the ordinary modes[.]” *The Mayor and the City*

of *Atlanta v. Perdue*, 53 Ga. 607, 608 (1875); accord *Chang*, 323 Ga. at 813, 928 S.E.2d 1(2). In fact, given appropriate notice, a city is “liable for defects which are gradually brought about by the forces of nature, and for a defect or an obstruction created in or placed on a public street by a stranger[.]” *City of Barnesville v. Sappington*, 58 Ga. App. 27, 28, 197 S.E. 342 (1938). See also *City of Summerville v. Aldred*, 101 Ga. App. 286, 288(1), 113 S.E.2d 463 (1960) (concluding that a city is required to keep its streets clear of hazards, “no matter by what cause the street may have become defective and unsafe”).

[13] [14] As set forth above, there was evidence that the City agreed to keep the sidewalk at issue maintained, had actual knowledge of the hazard on the sidewalk, and failed to address it. Under such circumstances, the City had a duty to keep this sidewalk safe. *Cook*, 188 Ga. App. at 64(6), 372 S.E.2d 245. The City has assembled a parade of horrors regarding this conclusion, contending that it would create confusion among municipalities and the DOT to determine which party is responsible for maintenance. We disagree. Today’s conclusion merely reaffirms the longstanding principle that a municipality is bound to keep its streets and sidewalks in a safe condition for travel in the ordinary modes, *Perdue*, 53 Ga. at 608, and that duty extends

to state highways when a city agrees to maintain them. See *Cook*, 188 Ga. App. at 64(6). To the extent the City asserts that the DOT should have been liable for Jacobs’ injuries, such a conclusion does not relieve the City of liability. Where, as here, a municipality “is under such statutory duty to maintain a street it cannot escape liability for failure to do so by reason of the failure of another political agency or third party also charged with the duty of keeping it in repair.” *Bush v. City of Gainesville*, 105 Ga. App. 381, 385(1), 124 S.E.2d 667 (1962).

*4 Because Jacobs fell as a result of a hazard that the City had knowledge of on a sidewalk it had agreed to maintain, and therefore had a duty to keep free of hazards, the trial court did not err in denying the City’s motion for directed verdict and JNOV.

Judgment affirmed.

Barnes, P. J., and *Doyle*, P. J., concur.

All Citations

--- S.E.2d ----, 2026 WL 2858431

Footnotes

- 1 We note that the City dedicates nearly half of its briefing to challenging the trial court’s denial of its motion for summary judgment. But when a motion for summary judgment is “overruled on an issue and the case proceeds to trial and the evidence at the trial authorizes the verdict (judgment) on that issue, any error in overruling the motion for summary judgment is harmless.” *Yash Solutions, LLC v. New York Global Consultants Corp.*, 352 Ga. App. 127, 139–40(2)(a) (834 S.E.2d 126 (2019) (punctuation omitted). As will be shown below, evidence authorized the verdict on this issue, which is now moot as a result. See *Moore v. Moore*, 281 Ga. 81, 85, 635 S.E.2d 107 (2006). Being moot, we decline to address summary judgment any further.