YOU AND THE LAW

Home Owner Fails in Attempt to Gain Relief From Impact of Errant Baseballs

Tonya L. Sawyer

Donald G. Metcalf v. Town of Northbridge;
App. Ct. Mass.; 16-P-551; 90 Mass. App. Ct. 1124;
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A Massachusetts appeals court affirmed the ruling of a trial court that a municipality in that state is protected by sovereign immunity in a case in which it was sued by a resident and his spouse who lived adjacent to a baseball diamond and claimed its use was a "nuisance" because of errant baseballs.

Complaint

The complainant "sounds in nuisance and seeks damages as well as an injunction prohibiting use of the baseball field until adequate measures are taken to abate the nuisance," wrote the appeals court. In essence, the claim rested on the allegation that the town failed to act after having been put on notice by the plaintiffs of a condition that substantially and unreasonably interferes with their enjoyment of their property.

Trial Court Ruling

The trial court granted the town's motion for summary judgment on the ground of sovereign immunity under G. L. c. 258, § 10(b) and (j), which protects a municipality from liability for acts by third parties. The plaintiff appealed.

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Facts of the Case

Plaintiff Donald Metcalf's property abuts a city-owned baseball diamond, "where various school baseball teams sponsored by the Town Parks and Recreation Commission frequently play baseball with permission from the Town school department," according to the court records.

Shortly after purchasing the property, the plaintiff observed foul balls being hit from the baseball diamond, which landed on his driveway, backyard, and garage. The court record noted that the baseballs "caused damage to the garage siding as well as the plaintiffs' vehicles." When the plaintiffs brought this problem to the Town's attention, the Town replaced the 8-ft fence that separated the field from the plaintiffs' property with a 12-ft fence. It also raised fences connecting the backstop behind home plate to dugouts on the first and third baselines from 6 ft to 10 ft. These installations were paid out of the Building and Grounds Department's budget.

Court Discussion

"When these alterations did not resolve the errant baseball problem, the Town installed a 50-foot net behind the backstop at a cost of $4,796. The net extends 20 feet higher than the backstop. Utility companies donated services to install poles from which the net is strung. Half of the installation cost was paid from the Building and Grounds Department budget; the other half was paid from the Town Public Works Department budget. Before installing the net, the Town considered and obtained private estimates for installing a more effective backstop with an 'overhang.' Price estimates were approximately $17,000 for a private entity. This price would have been higher if the Town had put the overhang project out to bid. The Town also determined that redesigning the field would be prohibitively expensive.

"Expenditures under $5,000 for projects performed by the Building and Grounds Department are within the sole discretion of its director. Expenditures exceeding $5,000 must be approved by the superintendent of the school district and school committee if not already included in the Building and Grounds Department budget. The cost of a new backstop or field redesign would require the school department to cut other school services, supplies, or,

potentially, staffing. If the funds were authorized to come from one of the school department's 'revolving accounts,' those funds would have to be replaced in the following year's budget, requiring either a higher overall budget appropriation by the Town or cutting costs elsewhere in the Town's budget.

"Further, for the Public Works Department to make a meaningful contribution to the cost of such projects, funding for other Town services it provides would have to be reduced. The same is true of contributions from the Parks and Recreation Commission. Accordingly, the Town manager, who is responsible for administering the use of Town facilities, determined that it was not in the Town's best interest to allocate funds for a new backstop or to redesign the field at the expense of other services needed in the Town. The plaintiffs admit that the specifications of other baseball diamonds in the Town would not safely or conveniently accommodate the teams that currently play at the field."

Finally, the appeals court noted that case law dictates that the Town's corrective measures are immune as discretionary functions. In addition, the Town is entitled to discretionary function immunity under § 10(b) for the initial design and construction of the baseball field. Furthermore, in *Alter v. Newton* (1993) the initial decision not to erect a fence at the time of the construction of the field was discretionary. However, the plaintiff argued on appeal that "the actual playing of the game constitutes implementation of the immunized [original] policy decisions," for which the town is not immune.

Appeals Court Ruling

"This argument is defeated by Alter," wrote the appeals court, because once the municipality made its initial policy-based decision—the design and construction of a ball field—it "shielded [itself] from liability for the consequences" of that decision (Id. at 146–147). "In other words, if a municipality's original decisions fall within the discretionary function exception, then the municipality enjoys immunity for the resulting consequences. The motion judge was accordingly correct in allowing summary judgment based on G. L. c. 258, § 10(b)."

References

Alter v. Newton, 35 Mass. App. Ct. 142, 146, 617 N.E.2d 656 (1993).