

Wrongful Death – Summary Judgment

SERVICES

Premises Liability

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Timothy R. Scannell

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Timothy R. Scannell and Joseph W. Fazzino earned an order of summary judgment entered in favor of their clients in a case involving a fatal motor vehicle accident between a tractor-trailer and a bicyclist. The Plaintiff cited to local city ordinances in an attempt to bring claims of negligence per se against the Defendants, which sounded in the theory that rocks bordering the Defendants' property obstructed and impeded the bicyclist's ability to travel on the public sidewalk. During litigation, the Plaintiff filed an offer of compromise in the amount of \$425,000.00.

In response to the Plaintiff's allegations, the Defense retained a land surveyor to conduct an assessment as to the rocks' positioning relative to the property lines. Based on their expert land surveyor's assessment, the Defense was able to conclusively demonstrate that, pursuant to the applicable city ordinances, the public right-of-way was not breached by the Defendants.

Furthermore, the Defense was able to locate and conduct the depositions of out-of-state eyewitnesses to the subject accident. The eyewitnesses provided vital testimony that confirmed the bicyclist's path of travel was not influenced or obstructed by the rocks bordering the Defendants' property in any way. The witnesses further confirmed that the bicyclist willingly exited the sidewalk, further establishing that the rocks bordering the subject property did not causally factor into the occurrence of the accident.

On motion for summary judgment, the Defense took the position that there was no genuine dispute of material fact that (1) the Defendants did not violate the applicable city ordinances, and therefore could not be found negligent as a matter of law, and (2) that the rocks bordering the Defendants' property did not proximately cause the subject motor vehicle accident. Ultimately, the Court agreed with Defense counsel that, based on the admissible evidence, no ordinance violation could be assessed against the Defendants. Therefore, the Court found in favor of the Defendants as a matter of law.