STATE OF INDIANA)
)
COUNTY OF MARION)

MARION SUPERIOR COURT 2
CIVIL DIVISION
ENVIRONMENTAL DOCKET
CAUSE NO. 49D02-1306-MI-016812

MELODIE LIDDLE,)
)
Plaintiff,)
)
v.)
)
CAMERON F. CLARK, in his official)
Capacity as Director of the Indiana Dept.)
of Natural Resources, PAUL SIPPLES,)
In his individual and official capacity as)
Versailles State Park Manager, and,)
HARRY BLOOM,)
)
Defendants.)

ORDER ON PARTIES CROSS MOTIONS FOR SUMMARY JUDGMENT

FACTS

Plaintiff Melodie Liddle filed suit against Cameron Clark, in his capacity as Director of Indiana Department of Natural Resources, Paul Sipples ("Sipples") individually and as Manager of Versailles State Park, and Harry Bloom, individually. The facts of the lawsuit are largely undisputed. While walking with her dog on a leash in Versailles State Park[1] (hereinafter "Park") on December 16, 2011, Liddle's dog was caught and killed by trap situated between a footpath and the creek. (Sipple Dep. 45 of 204.)

Liddle purchased a Park admission pass for 2011, and on December 16th visited the Park to walk her two dogs. Her dog Copper was on a retractable leash which was only partially extended. When the dogs became thirsty, Liddle and the dogs went about 15 feet from the road, down a path to a stream where the animals drank some water. Liddle turned to leave when her dog, Copper, started screaming. Copper had gotten caught in a raccoon trap covered by a cubby built into the embankment at the water's edge. (Pl. Ex., "D", Liddle Affidavit, p. 102 of 204, ¶9,

[1] It is undisputed that Versailles State Park is owned by the State of Indiana and operated through its Department of Natural Resources and its Director, Cameron Clark.

¶10, ¶11.) Liddle was unable to free Copper from the trap and called her friend Gene Beach to come and help. (Pl. Exhibit "D", Liddle Affidavit, p. 102 of 204, ¶30.) Beach, an experienced trapper, came and was able to free the lifeless dog from the trap.

Liddle reported the incident immediately to the ranger station and the Park manager Paul Sipples came to examine the scene. Sipples walked down the path to the stream and picked up Copper's leash and the trap. When Sipples held the leash up a little above his head, the leash did not extend past Sipple's knees. Sipple put the trap in the back of the DNR truck. (Pl. Exhibit "A", Liddle Dep. p. 30-32.) Sipples said the Park had put out the traps to manage a nuisance raccoon population. Sipples told Liddle no signs were posted to inform park visitors of the traps because, "if signs were posted traps would be stolen." (Pl. Exhibit "G", p. 124 of 204, ¶52.)

Paul Sipples was employed by the Indiana Department of Natural Resources. It was Sipples duty to oversee the operations, maintenance, and supervise and train the employees of the Park. (Pl.'s Ex. "B", TID 58936329, Sipples Dep. p. 25 of 204.) Harry Bloom is the full-time security officer for the Park and responsible for security and maintenance in the Park. (Pl.'s Ex. "B", TID 58936329, Sipples Dep. p. 27 of 204.) Bloom also on occasion deals with problem animals. (Pl. Exhibit "C", Bloom Deposition, p. 69 of 204). In its summary judgment order entered on July 1, 2016, this Court found Sipples and Bloom's actions were performed during the course of their employment.

The Natural Resources Commission enacted an emergency rule to amend 312 IAC9 authorizing the local Property manager to reduce raccoon density at certain state parks, including Versailles State Park, where the raccoons posed a health risk to persons on the properties. The amendment required the individual trapping within a state park pursuant to the emergency rule to possess written authorization from the property manager, along with any special conditions, and a nuisance wildlife animal control permit. (Emergency Rule LSA Document #11-45(E)).

It is undisputed that Sipples did not provide written authorization permitting Bloom to trap within the Park, but verbally authorized Bloom to trap raccoons. (Pl. Designated Ev. Def. Bloom's Response to Req. No. 2, p. 182 of 204.) Bloom, a licensed trapper, decided where to locate the traps and did not advise Sipples where he had placed the traps. The traps were Bloom's personal property; he used a 220 conibear trap which is fatal to raccoons. There were

no signs to indicate where traps were located or to warn patrons that traps were being used in the park. (Pl. Ex., Sipple Dep. p. 47 of 204.) Bloom trapped during the trapping season as set forth by the Indiana Fish and Wildlife Division and followed their guidelines for trapping. The rules do not make a distinction for trapping on private or public grounds. (Pl. Ex., Sipple Dep. p. 50 of 204.)

This Court previously entered an order on Defendants' motion for summary judgment holding that 1) Defendants Bloom and Sipples are immune from personal liability, 2) Liddle's claims for negligent infliction of emotional distress and punitive damages fail, 3) Liddle's challenge to the 2012 and 2013 Permit Rules is moot, and 4) Liddle's claim for attorney fees is barred by the American Rule. The Court of Appeals denied Liddle's motion to accept interlocutory appeal of this cause. Upon remand, the Parties filed cross motions for summary judgment and designated evidence.

ISSUES

Liddle contends the Defendant Indiana Department of Natural Resources breached a duty of care it owed to Liddle, a park patron.

The State contends that Liddle was contributorily negligent by permitting Copper to leave the road and walk to the stream for a drink.

STANDARD OF REVIEW

A moving party carries the initial burden of affirmatively negating a non-moving parties claim by demonstrating the absence of any genuine issue of fact as to a determinative issue. Thereafter, the burden shifts to the non-movant to come forward with contrary evidence showing an issue for the trier of fact. Ind. Trial Rule 56(C); *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind.2014). Indiana's "distinctive summary judgment standard imposes a heavy factual burden on the movant to demonstrate the absence of any genuine issue of material fact on a least one element of the claim." *Siner v. Kindred Hosp.Ltd. P'ship*, 51 N.E. 3d 1184, 1187 (Ind. 2016). When deciding whether summary judgment is proper, the trial court may only consider the evidence designated by the parties. *Knighten v. E.Chi. Hous. Auth.*, 45 N.E. 3d 788, 791 (Ind. 2015).

The Court's standard of review remains unchanged when, as here, the parties file cross-motions for summary judgment. The Court must "consider each motion separately to determine

whether the moving party is entitled to judgment as a matter of law." *SCI Propane, LLC v. Frederick*, 39 N.E.3d 675, 677 (Ind.2015) (quoting *Reed v. Reid*, 980 N.E.2d 277, 285 (Ind.2012)). Lastly, the court must "construe all factual inferences in favor of the non-moving party and resolve all doubts regarding the existence of a material issue against the moving party." *Hudgins v. Bemish*,, 64 N.E. 3d 923, 929 (Ind. Ct. App. 2016).

DECISION

I

The Court **GRANTS** Liddle's motion for summary judgment.

To sustain her action for negligence, Liddle must establish (1) a duty owed by the defendant to conform its conduct to a standard of care arising from its relationship with the plaintiff; (2) a breach of that duty; and (3) an injury proximately caused by the breach of that duty. *Webb v. Jarvis,* 575 N.E.2d 992, 995 (Ind.1991), *reh'g denied.* Indiana has long-recognized that governmental entities owe park users the common law duty of ordinary and reasonable care to maintain a public recreational facility in a reasonably safe manner. *Benton v. City of Oakland City*, 721 N.E. 2d 224, 230 (Ind. 1999); *Serviss v. State, Dep't of Nat. Res.*, 721 N.E.2d 234, 237 (Ind. 1999). All governmental units are bound, both directly and under the theory of respondeat superior, by the common law duty to use ordinary and reasonable care under the circumstances." *Benton v. City of Oakland City*, 721 N.E. 2d 224, 232 (Ind. 1999).

As a park patron, Liddle was a public invitee. *Bloomington v. Kuruzovich*, 517 N.E. 2d 408, 413 (Ind. Ct. App. 1987). Indiana holds that a governmental entity which maintains a public park is liable is to those invited onto the land for any hazardous conditions the government entity causes or negligently allows to remain on the land. *Id.* This duty arises from the Park's premises liability to invitees. In Indiana's seminal case for premises liability, *Burrell v. Meads*, our supreme court imposed a three-part test to determine a landowner's liability for harm caused to an invitee by a condition on its land. Under the *Burrell* test, a landowner can be held responsible only if the landowner:

> (a) Knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) Should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) Fails to exercise reasonable care to protect them against the danger.

Burrell v. Meads, 569 N.E.2d 637 (Ind. 1991). The law recognizes that this standard of reasonable care includes an obligation to discover and correct or warn of hazards which the possessor should reasonably foresee as endangering an invitee. Restatement (Second) of Torts § 343.[2] Indiana requires that even trespassers, to whom the landowner owes no duty of reasonable care, must be advised of artificial conditions created by the land's possessor if he has reason to believe the trespasser will not discover the danger.[3]

In the instant case, the Park created an unreasonable risk of harm when it invited patrons to walk their dogs in the park, yet failed to warn them of the hidden raccoon traps. At the time Liddle walked her dogs in the Park, the nuisance animal policy and emergency rule did not require the Park to post notices informing visitors of the latent traps. (Def. Desig. Evid. Ex. "4", Interrogatory 15.) The Park merely required the Park patron to keep their animal on a six-foot leash at all times. Here, Liddle could not have discovered the danger because the traps were

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[2] A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- (c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts § 343 (1965)

[3] A possessor of land who knows, or from facts within his knowledge should know, that trespassers constantly intrude upon a limited area of the land, is subject to liability for bodily harm caused to them by an artificial condition on the land, if

- (a) the condition
  - (i) is one which the possessor has created or maintains and
  - (ii) is, to his knowledge, likely to cause death or seriously bodily harm to such trespassers and
  - (iii) is of such a nature that he has reason to believe that such trespassers will not discover it, and
- (b) the possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved.

Restatement (Second) of Torts § 335 (1965)

intentionally hidden. While it is unlikely the traps would have posed a threat to an adult, they were able, as demonstrated, to kill a dog.

The Court enters summary judgment on a dispositive issue finding the Department of Natural Resources was negligent in failing to make any effort to warn park patrons their employees had placed animal traps in the park. This holding is consistent with Indiana decisions and cases from other jurisdictions which found a State negligent if it created a dangerous condition without providing a warning or other form of protection for individuals. *See*, *Benton v. City of Oakland City*, 721 N.E. 2d 224, 233 (Ind. 1999) (") *City of Indianapolis v. Emmelman*, 108 Ind. 530, 9 N.E. 155 (1886) (City negligent in leaving pit of water unattended when parents ignorant of danger); *Mills v. American Playground Device Co.,* 405 N.E.2d 621, 627 (Ind.Ct.App.1980) (defining a municipality's duty as one "to exercise ordinary care to make public parks reasonably safe for persons rightfully frequenting and using the parks and equipment"), *reh'g denied; Hall v. State*, 9 Misc. 2d 234, 170 N.Y.S. 2d 32 (1958) (child burned by unattended Park rubbish fire);

In granting Liddle's motion, the Court does not dispute the authority of the State to permit trapping within State Parks. The Court's ruling is limited to finding the State negligent for its failure to warn of the latent dangerous condition it created within the Park.

II

The Court **DENIES** Defendants' motion for summary judgment. Having reviewed the designated evidence and construing all reasonable inferences in favor of the nonmoving party, the Court cannot find Liddle contributorily negligent as a matter of law for walking the few feet down an unmarked path to allow her dogs a drink of water. The request to "PLEASE STAY ON MARKED TRAILS" which appears in the Park brochure, is merely a request. It does not appear in the "Rules and Regulations" portion of the brochure. (Def. Desig. Evid. Ex. "2(A)".) Neither was there any designated evidence that Liddle's dog leash was longer that the required six feet. Lastly, the injury to Liddle's dog is not the type of harm reasonably foreseeable from stepping off a park path.

DAMAGES

The Court declines Liddle's second invitation to create a new measure of damages for her loss. Under Indiana law Liddle's damages are limited to the fair market value of her pet at the time of its death. *Lachenman v. Stice*, 838 N.E. 2d 451 (Ind. Ct. App. 2005). The parties, while disagreeing as to the appropriate measure of damages, have stipulated as to the selling price of beagle dogs. The Court FINDS that the average of the values stipulated is the proper damages amount and awards Liddle $477.00 for her loss.

All of the above is SO ORDERED this 27th day of June, 2017.

Therese Hannah.
Commissioner Therese Hannah

Tim Oakes
Judge Timothy W. Oakes

Distribution: Via Electronic Notice.