

City of Lynchburg v. Brown

Virginia Supreme Court

June 9, 2005

This case involves 15.2-1809, the so-called recreational use immunity statute. The statute reads as follows;

No city or town which operates any park, recreational facility or playground shall be liable in any civil action or proceeding for damages resulting from any injury to the person or from a loss of or damage to the property of any person caused by any act or omission constituting ordinary negligence on the part of any officer or agent of such city or town in the maintenance or operation of any such park, recreational facility or playground. Every such city or town shall, however, be liable in damages for the gross negligence of any of its officers or agents in the maintenance or operation of any such park, recreational facility or playground. (emphasis added).

This case involves a metal bleacher at a softball field operated by the City of Lynchburg. The plaintiff was a spectator who was seated towards the top of a five level metal bleacher. She got up to leave and walked diagonally down towards one end. The last seat on the very end of the bottom row, where she tried to step, was bent down and she fell as a result of this. She claimed she could not see that the seat was significantly bent because it was night and the lights were casting shadows. She saw part of the seat, but could not see the part that was bent down.

The City indicated that they did not know of the bent seat. They did have workmen there that very day and admitted that the defect was open and obvious, but the workman did not see or report the defect to the City. It was uncontradicted that the City did not have actual notice of the defect. The case went to the jury with a gross negligence instruction and the jury awarded the plaintiff a verdict of \$37,500, which was sustained by the trial court.

On appeal the Virginia Supreme Court reversed. The key was the lack of actual knowledge of the City. Constructive knowledge will support a finding of ordinary negligence, and there were workmen there that day before the game who should have seen the defect and fixed it. But deliberate conduct, that is, actual knowledge and a knowing refusal to take necessary action, is very important in establishing gross negligence.