

Circuit Court for Anne Arundel County
Case No. C-02-CV-18-001151

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1603
September Term, 2019

MARK HEIM

v.

ANNE ARUNDEL COUNTY, ET AL.

Nazarian,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: May 25, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Mark Heim, the appellant, crashed his bicycle while riding on the Baltimore & Annapolis Trail (“the Trail”). He sued Anne Arundel County, the appellee, for an alleged defect at the foot of one of the Trail’s bridges. The trial court granted Anne Arundel County summary judgment. Because the operation and maintenance of the Trail is a governmental function, we hold Anne Arundel County has governmental immunity, and therefore affirm the trial court’s grant of summary judgment.

BACKGROUND

The Baltimore & Annapolis Trail is a 13-mile long trail, which winds from the northern bank of the Severn River opposite the United States Naval Academy up to northern Glen Burnie. It is open to the public and free to use. Someone trying to use the Trail to get from Baltimore to Annapolis, or vice versa, would find the Trail is connected to neither their departure point nor their destination. Of course, the Trail isn’t intended to be a transportation corridor. Rather, the Trail is used for educational and recreational purposes.

Heim bicycles regularly and has done so for over 40 years. On a pleasant, sunny June day he took a short break from work to take a bicycle ride. While riding on the Trail, Heim crashed his bicycle, was thrown to the ground, and injured. He sued Anne Arundel County for its alleged failure to maintain one of the Trail’s bridges. Specifically, Heim alleges that access to the bridge used to be limited by a wooden traffic control bollard and that although the bollard had been removed, the hole in which the bollard was anchored and the steel sleeve that held the bollard remained and stuck up too high above the ground.

After discovery was completed, Anne Arundel County filed a motion for summary judgment, asserting, among other things, that it was shielded from liability by statutory and common law immunity. The circuit court granted the motion. Heim appealed.

Heim raises several theories for why Anne Arundel County is not protected by either statutory or common law immunity. If Anne Arundel County has even one of the immunities, however, it is immune from tort liability. We hold that Anne Arundel County has common law governmental immunity and, therefore, affirm the trial court.¹

DISCUSSION

We review a trial court’s grant of summary judgment without deference. *Mayor & City Council of Baltimore v. Whalen*, 395 Md. 154, 161 (2006). We first determine whether

¹ We note that Heim’s flagship argument concerns the alleged inapplicability of the Maryland Recreational Use Statute (“MRUS”). MRUS was adopted in 1966 to encourage landowners to make their land available to the public by limiting liability for injuries suffered by persons entering the land for recreational and educational purposes. MD. CODE, NAT. RES. (NR) §§ 5-1101 *et seq.*; *Martinez v. Ross*, 245 Md. App. 581, 584 (2020); *Fagerhus v. Host Marriott Corp.*, 143 Md. App. 525, 531 (2002). In 2000, the General Assembly adopted a relatively minor amendment to the MRUS to clarify that local government landowners are entitled to the same immunity as private landowners. In so doing, however, the legislature omitted to confer immunity for recreational “structures” on public land. NR § 5-1101(d). The legislative history suggests that the General Assembly meant to exempt playground equipment and the like when it said “structure.” Letter to House Envtl. Matters Comm. from Hon. Tod D. Sher re: HB 296 (2000) (Feb. 15, 2000) (bill sponsor states “playground equipment excluded”); Letter to Senate Econ. & Envtl. Affairs Comm. from Hon. Tod D. Sher re: HB 296 (2000) (Mar. 21, 2000) (same); Letter from John Byrd, Legislative Comm. Chair, Md. Recreation & Parks Ass’n, in Support of HB 296 (2000) (states understanding that “bill’s protections do not extend to playground equipment and buildings”) (all available in bill file, Acts of 2000, ch. 352 (HB 296)). We don’t believe that, in so doing, the General Assembly intended to impose liability for the removal of a structure, as Heim has described in his complaint. But in any event, even if Heim is right that Anne Arundel County is not entitled to immunity under the MRUS, it doesn’t undermine the existence of governmental immunity as described above.

there is a genuine dispute of material fact. If there is not, then we determine whether the trial court correctly granted summary judgment as a matter of law. *Id.* at 161-62. Determining whether a local government’s action entitles it to governmental immunity is a question of law. *Id.* at 162.

The rules of governmental immunity are ancient and perhaps arcane, but well-understood. *See Anne Arundel Cnty. v. Fratantuono*, 239 Md. App. 126, 139 (2018) (summarizing general rules of governmental immunity). If an accident occurs in a park, the government is performing a governmental function and is, therefore, immune. *See, e.g., Mayor & City Council of Balt. v. Ahrens*, 168 Md. 619, 628 (1935) (maintenance of a park is governmental function). If the accident occurs on a road, the government is performing a proprietary function and is, therefore, not immune. *See, e.g., Mayor & City Council of Balt. v. Eagers*, 167 Md. 128, 136 (1934) (maintenance of a sidewalk is proprietary function). And, if an accident occurs on a road in a park, we must determine if the place of the accident is more road-like or more park-like. *See, e.g., Haley v. Mayor & City Council of Baltimore*, 211 Md. 269, 272-73 (1956) (holding Baltimore City liable for a path through a park because the “use” of the path was to connect sidewalks on either side of the park). We generally accomplish that task by asking if the road-in-a-park is connected at its ends and used for transportation or is unconnected at its ends and is used for recreation. *Id.* Here, there is no doubt that the Baltimore-Annapolis Trail is much more like a park than like a road. It is not connected at either end to the road system and is used for recreational purposes, not transportation purposes. As there is no genuine dispute about these material facts, and because Anne Arundel County was performing a governmental function, it was

therefore entitled to governmental immunity. Moreover, it was entitled to judgment as a matter of law. As a result, summary judgment was appropriate. We affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY IS
AFFIRMED. COSTS TO BE PAID BY THE
APPELLANT.**