

VIRGINIA RECREATIONAL USE IMMUNITY FOR CITY BEACH ACCESS

CITY OF VIRGINIA BEACH v. EDWARD L. FLIPPEN **Supreme Court of Virginia** **Record No. 950916** **March 1, 1996.**

In this case, plaintiff Edward Flippen was injured on a beach access stairway maintained by the defendant City of Virginia Beach. The facts of the case were as follows:

Edward L. Flippen (Flippen) owned a vacation beach home in the Sandbridge area of the City of Virginia Beach (the City). Although the oceanfront and beach in the Sandbridge area are privately owned, the property owners have permitted the public to use the beach for recreational purposes for many years. When the City approved the subdivision plat, the developers reserved pedestrian access strips to the beach.

These access strips have never been conveyed to the City by fee transfer or easement. But since the time of the subdivision's creation and consistent with the reservation in the plat, the City has maintained these access strips to the beach for pedestrian ingress and egress.

Concern for beach erosion during the 1970s and 1980s prompted the Sandbridge property owners to seek permission to build a series of bulkheads along Sandbridge beach. The City approved the construction of the bulkheads with the understanding that the property owners would construct stairways over the bulkheads which the City would thereafter maintain to preserve public access to the beach. In addition to maintaining the access strips and stairways, the City provides and maintains refuse receptacles, information signs, and sand fences at the access points to the stairways.

The City also provides and maintains refuse receptacles on the beach itself during the warmer months. On December 11-13, 1992, the City was struck by a severe Northeastern storm. Extensive damage occurred to several of the stairways over the Sandbridge bulkheads. City workers surveyed this damage on December 14 and 15 and blocked the entrances to noticeably damaged stairways with lumber and warning tape. On the evening of December 31, 1992, Flippen was walking his dog along Sandfiddler Road adjacent to the bulkheads. Flippen mounted a stairway which was not blocked by lumber or tape, crossed the bulkhead and descended the stairway toward the beach. Storm damage to this stairway had resulted in a single tread missing from the first flight of stairs on the beach side of the bulkhead. Flippen fell through the gap in the stairs to the beach below and suffered personal injuries.

In his complaint, **Flippen alleged that the City negligently maintained the stairway. The City defended on the ground that "its negligence, if any, did not amount to gross negligence, and it was thus immune" under the state recreational use statute.** A jury found that "the City was guilty of simple negligence" and awarded Flippen damages in the amount of \$246,280.90. The city appealed to the state supreme court.

As characterized by the state supreme court, the issue on appeal was **"whether, absent gross negligence, the municipality is immune from liability for personal injuries suffered by a permissive user on privately owned recreational property for which the municipality had limited responsibility."** The City contended that it was immune from liability under the state recreational use statute, Code Section(s) 29.1-509(B), which provided, in pertinent part, as follows:

A landowner shall owe no duty of care to keep land or premises safe for entry or use by others for . . . recreational use No landowner shall be required to give any warning of hazardous conditions or uses of, structures on, or activities on such land or premises to any person entering on the land or premises for such purposes...

As noted by the court, the state recreational use **statute defined the term "landowner" as "the legal title holder, lessee, occupant or any other person in control of land or premises."** In this particular instance, the supreme court noted that "Flippen's activity as a recreational use of the stairway in question is not an issue in this appeal." Further, the court found there was "no dispute that following the construction of the stairway by the property owners, the City alone assumed responsibility for the maintenance of the stairway and provided additional services to enhance the aesthetic appearance of the adjoining public access ways." Thus, the court found that the evidence substantiated **"the City's claim that it was in control of the stairway at the time of Flippen's recreational use of it." Under such circumstances, the court concluded that the "comes within the definition of a landowner" under the state recreational use statute, Code Section(s) 29.1-509, because the City "was in control of the land or premises."**

On appeal, **Flippen argued that the state recreational use statute was "inapplicable to municipal corporations."** Specifically, Flippen contended **"the legislature intended the statute to extend immunity only to private landowners, having provided for recreational use immunity for municipalities elsewhere."** In particular, state law provided counties and municipalities were not liable for negligence, only gross negligence, which caused injuries in public recreational facilities, Code Section(s) 15.1-291.

According to the state supreme court, the specific issue was, therefore, **"whether, on the particular facts of this case, the City is included within the term 'any other person' as used in Code Section(s) 29.1-509(A)" of the state recreational use statute.** In the opinion of the court, the City was, indeed, considered a "person" within the meaning and scope of the state recreational use statute.

Municipal corporations have a dual identity, existing both as a body politic and a

body corporate. In the latter identity, a municipal corporation may be a "person" just as any corporation or other legal entity is a person. Code Section(s) 1-13.19. We further recognize that, in certain instances, the legislature has expressly excluded municipalities from coming within the definition of the term "person"... **When, as here, a statute contains no express definition of a term, the general rule of statutory construction is to infer the intent of our legislature from the language and "the plain meaning of the words." The clear legislative intent of Code Section(s) 29.1-509 is to encourage the opening of private land to public recreational use.**

Flippen had also argued that "the City's maintenance of this stairway is comparable to its maintenance of sidewalks, suggesting that the City's actions are not motivated by the statute," i.e., to open land for public recreational use. The state supreme disagreed.

[T]he intended use of the stairway in question is clearly to provide access to the recreational beach. The City's actions in providing and maintaining public access over private land for recreational purposes is entirely consistent with the purpose of Code Section(s) 29.1-509 and the conclusion that the legislature intended a broad interpretation of the definition of the term "landowner" contained therein.

Accordingly, the state supreme court found "no logical reason, under the specific facts of this case, to exclude the City from the definition of landowner found in that statute."

We hold that the City is a "person in control of [the] land or premises" as contemplated by Code Section(s) 29.1-509 and is entitled to the immunity extended by that statute for the activities it undertook to provide public access to the beach adjacent to the stairway.

The state supreme court, therefore, reversed the judgment of the trial court in favor of Flippen and entered final judgment in favor of the City based upon the applicable landowner immunity under the state recreational use statute.