

Court urged to clarify time limit for contribution claims

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SPRINGFIELD — Metra is asking the Illinois Supreme Court to decide which of two statutes of limitations applies in a contribution action against a local public entity.

At issue are the one-year limit set by the Local Governmental and Governmental Employees Tort Immunity Act and the two-year limit found in the Contribution Act.

The case stems from a personal-injury suit against Illinois Central Railroad Co. and the Northeast Illinois Regional Commuter Railroad Corp., commonly known as Metra.

On Oct. 4, 2002, Rhonda Brooks, a minor, walked through a hole in a fence and onto railroad tracks used by Illinois Central and Metra. She was struck by an oncoming Metra train, and her left leg had to be amputated.

Rhonda's mother, Jannie Brooks, filed suit within a week of the accident, alleging that the fence should have been better maintained.

During discovery in January 2003, Metra admitted that it owned and was responsible for the upkeep the fence.

In December 2003, more than 13 months after the original suit was filed, Illinois Central filed a contribution claim against Metra. Illinois Central alleged Metra's poor maintenance of the fence was the proximate cause of the accident and argued that Illinois Central was in no way liable.

Cook County Circuit Judge Diane J.

Larsen granted Metra's motion to dismiss the counterclaim, relying on the one-year statute of limitations in the Tort Immunity Act, 745 ILCS 10/8-101.

Larsen then certified a question for appeal to the 1st District Appellate Court, asking whether the one-year statute of limitations in the Tort Immunity Act or the two-year limit in the Contribution Act applies to a contribution action against a local public entity.

In its petition to the high court, Metra contends that section 8-101 of the Tort Immunity Act "governs any 'civil action' and, therefore, governs contribution actions against local public entities."

Metra quoted from *Paszkowski v. Metropolitan Water Reclamation District of Greater Chicago*, 213 Ill.2d 1 (2004), in arguing that "the legislature intended that section 8-101 of the act apply 'broadly to any possible claim against a local governmental entity and its employees.'"

"Given the breadth of this intent," Metra's attorneys wrote, "we conclude ... that the comprehensive protection afforded by section 8-101 necessarily controls over other statutes of limitations or repose."

The Appellate Court disagreed with Larsen and Metra, however, holding that the Contribution Act controlled and that the claim was filed in time.

The Contribution Act reads, "The applicable limitations period ... shall apply to all actions for contribution or indemnity and shall preempt, as to contribution and indemnity actions only, all

other statutes of limitation or repose." 735 ILCS 5/13-204(c).

Metra contends in its petition that the Contribution Act, which is contained in Article 13 of the Code of Civil Procedure, applies only to the statutes of limitations or repose within that article, not to a specific statute of limitations as found in the Tort Immunity Act or the Consumer Fraud and Deceptive Business Practices Act.

Justice Alan J. Greiman wrote the opinion for a unanimous panel of the Appellate Court: "We are persuaded by the reasoning of this court's recent decision in *Moore v. Chicago Police Department Officer Green*, No. 1-03-2651 (Dec. 29, 2004), issued subsequent to *Paszkowski*, which held that the limitation of actions provision in the Domestic Violence Act ... rather than that contained in the Tort Immunity Act, applied to an action brought on behalf of a domestic abuse victim against police officers for failure to investigate an incident that immediately preceded the victim's death."

In a passage on legislative intent and statutory language, Greiman noted that "more specific provisions should be applied to specific subjects and that later enactments prevail over earlier ones."

Finally, Greiman cited the Supreme Court's decision in *Stephens v. McBride*, which "found the now-defunct notice provision of the Tort Immunity Act did not apply to an action for contribution."

According to Greiman, the *Stephens*

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court concluded that “public policy militated against requiring a defendant seeking contribution from a local governmental entity to give the statutorily required notice within one year after its cause of action accrued, since a claim for contribution could accrue years after an accident occurred.” 97 Ill.2d 515 (1983).

But Metra countered: “The effect of the Appellate Court’s decision in [the *Brooks* case] is to lengthen the one-year limitation in the Tort Immunity Act to a two-year limitation for contribution actions.

“No exceptions to the one-year limita-

tion for contribution actions appears therein. The courts are prohibited from reading exceptions into statutes which do not appear therein.”

Representing Metra are in-house lawyers Sue-Ann Karger Rosen and Richard Capra. Also of counsel are Jay S. Judge, Michael E. Kujawa and Thomas N. Osran of Park Ridge’s Judge, James & Kujawa LLC.

The case is *Brooks v. Illinois Central Railroad Co., etc., et al.*, No. 101207.

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