

Illinois Courts' Treatment of Google Earth Images as Admissible Evidence

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Posted in Premises Liability

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The Takeway

With technological advancements on the rise, attorneys have new ways to provide visual information for specific locations involved in litigation, including Google Earth images. However, there's still much uncertainty about the utilization of these resources in litigation. Thus it is crucial to know when and how such resources are admissible.

Introduction

Internet services like Google Earth provide attorneys with sources of visual images for specific locations involved in litigation. These images can be helpful, but are they admissible into evidence? The Illinois Appellate Court, Third District, recently addressed this question in *Ory v. City of Naperville*, 2023 IL App (3d) 220105.

Case Background

In *Ory*, the plaintiff fell while walking on a pedestrian bridge and filed a two-count complaint, alleging negligence and premises liability against the City of Naperville. *Id.* at 1. The plaintiff alleged her fall was caused by a sidewalk defect consisting of "abrupt changes in height" in excess of 1½ inches. *Id.* She further alleged that the sidewalk defect had existed for a long time prior to her incident and the city failed to "(1) warn pedestrians of the defect, (2) provide adequate lighting to illuminate the defect, and (3) repair the defect." *Id.*

During discovery, several depositions were taken. The deputy engineer for the city testified that bridges were inspected every four years, and during his last inspection, no defects, sinking, or settling were noted. *Id.* at 2. When questioning the engineer, plaintiff's attorney used Google Earth images allegedly taken in 2012 and 2016 that depicted a sunken sidewalk (with uneven concrete/pavers) in the same area where the plaintiff fell in 2017. *Id.*

After all relevant witnesses were deposed, the City filed a motion for summary judgment, arguing that "it was immune from liability because (1) it had no notice of the alleged sidewalk defect, (2) the alleged defect was *de minimis*, and (3) it maintained a sidewalk inspection and replacement program." *Id.* at 3. In response, the plaintiff asserted that the Google Earth images provided "undisputed photographic

evidence . . . demonstrat[ing] that the sunken pavers [had] existed since at least August 2012." *Id.*

At hearing, the City responded that the images were inadmissible because the plaintiff failed to lay proper foundation. It also asserted that even if they were admissible, the images failed to show the deviation of the sidewalk. The court granted the City summary judgment and the plaintiff appealed. *Id.* at 3

Appellate Ruling

The Illinois Appellate Court affirmed the trial court's grant of summary judgment to the City.

One of the issues addressed was whether satellite-based images such as Google Earth can be considered by the court in ruling on a motion for summary judgment (i.e., whether the images were admissible evidence). The court found that Google Earth images were inadmissible for asserting negligence and premises liability as the images were not properly authenticated. To establish that the Google Earth images were actually taken on the dates stamped on them, the plaintiff had to present evidence describing how the photos were dated and that the dates on the images were accurate. *Id.* at 6. Because the images were not properly authenticated, the trial court properly did not consider them when ruling on the City's summary judgment motion.

The *Ory* court further found that even if the images were admissible, they did not establish that the City had actual knowledge of the alleged dangerous defect in the condition of the sidewalk. The court also found the images did not establish constructive notice because the plaintiff presented no evidence establishing how large the gap was at any given time, making it subject to repair/replacement under the City's program. *Id.* at 6. The City, on the other hand, presented evidence that less than two years prior to the plaintiff's fall, the gap in the sidewalk was less than one inch. *Id.* at 7.

The *Ory* court's decision was in line with the appellate court's previous findings on the use of Google Earth images for limited purposes, such as establishing geographical facts or determining the distance from one location to another. The court cited these examples:

- Establishing distance between various locations

People v. Davila, 2022 IL App (1st) 190882, ¶ 29, 462 Ill. Dec. 474, 207 N.E.3d 206; *Shaw v. Haas*, 2019 IL App (5th) 180588, ¶ 24, 437 Ill. Dec. 10, 143 N.E.3d 855

- Assisting the reader in understanding the layout of a certain intersection

Wisnasky v. CSX Transportation, Inc., 2020 IL App (5th) 170418, ¶ 6, 440 Ill. Dec. 206, 151 N.E.3d 678

- Establishing existence of pedestrian sidewalks

Peters v. Riggs, 2015 IL App (4th) 140043, ¶¶ 49-50, 392 Ill. Dec. 49, 32 N.E.3d 49

- Establishing location of park “*only* for the purpose of *understanding* the statements made *at trial* by the witnesses and by the trial court (emphases in original)

People v. Clark, 406 Ill. App. 3d 622, 634, 346 Ill. Dec. 386, 940 N.E.2d 755 (2010)

- Establishing distance between two residences

People v. Stiff, 391 Ill. App. 3d 494, 504, 328 Ill. Dec. 664, 904 N.E.2d 1174 (2009) *Id.* at 4.

Tags: Google Earth Images as Admissible Evidence, Internet Images as Admissible Evidence, Satellite-Based Images as Admissible Evidence