

Missouri Court of Appeals Hands Down Reminder that Not All Remedial Measures are Inadmissible

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Posted in Premises Liability

On August 28, 2014, Patricia Watson suffered multiple facial fractures and other injuries while riding her bicycle in St. Peters, Missouri. Watson was riding on the sidewalk and flipped head-first over the handlebars when the front wheel of her bicycle went into a sump inlet that the City had installed on the sidewalk. Watson sued the City of St. Peters for negligence, alleging that the sump inlet was an unreasonably dangerous condition. To prevail on her claims, Watson had to establish: 1) a dangerous condition existed on the premises that was not reasonably safe; 2) the City knew of the condition, or through the use of ordinary care should have known of it in time to remedy or warn of it; 3) the City failed to use ordinary care to remedy or warn of the dangerous condition; and 4) as a direct result of such failure, Watson suffered damage.[1]

At trial, Watson sought to introduce evidence of a 2012 bicycle accident involving a sump inlet at a different location in the city and of the city's resulting plan to retrofit all of the sump inlets in St. Peters. The goal of the plan was to make the city's sidewalks safer for pedestrians and recreationists like Watson. However, the trial court barred admission of the 2012 accident and of the city's plan to address the sump inlet problems.

Hindered by the trial court's evidentiary rulings, Watson was unable to prove the second element: that the City of St. Peters had notice of an unreasonably safe condition. As a result, the jury found Watson 100% at fault and awarded Watson \$0 in damages. Watson sought appellate review and raised two winning points on Appeal: 1) that the trial court erred in excluding evidence that the City had notice of a problem with its storm water sump inlets extending into the adjacent sidewalk and had taken steps to make the design safer before Watson's accident, and 2) that the trial court erred in excluding evidence of a similar bicycle accident in 2012 involving one of the City's sump inlets at a different location.

In a unanimous opinion authored by Hon. Angela T. Quigless[2], the Missouri Court of Appeals recently handed down *Watson v. City of St. Peters*, 599 S.W.3d 479 (Mo.App. E.D. 2020), reversing the trial court's judgment and remanding for a new trial. Guided by public policy rationales, the appellate court found that the trial court abused its discretion in excluding evidence that the City of St. Peters had implemented a citywide program to address the dangerous sump inlet conditions that caused Plaintiff's injuries.

Missouri courts generally apply the fundamental legal principle that subsequent remedial measures are inadmissible to prove negligence[3]. As the *Boggs* court explained over a decade ago, evidence of subsequent remedial measures to prove negligence is prohibited for two reasons: 1) no one would make improvements after an accident if the precautions could be used as evidence that previous conditions were unreasonably safe, and 2) changes after an accident are not relevant to establish a

condition that existed at the time of the accident. Evidence that a defendant made changes or repairs to prevent a reoccurrence of an accident should not be used to show a defendant's negligence or as an admission of guilt. Public policy, therefore, favors remedial measures.

Here, however, the city's plan to address the dangerous sump inlet conditions was a result of the 2012 accident, and the plan was implemented before Watson's injury in August of 2014. The City was notified of the dangerous sump inlet conditions prior to Watson's accident. Moreover, the City deemed the sump inlet conditions dangerous enough to warrant a citywide corrective program. The Court of Appeals specifically noted that, while waiting for the citywide program to begin, the City of St. Peters did not install any warning signs or paint the curbs near the sump inlets a different color to caution passersby. Noting that the 2012 accident and the city's plan to retrofit all of the sump inlets were "inextricably intertwined," the Court of Appeals found that both pieces of evidence "should have been presented to the jury so that it could have a more complete picture in determining liability."

Though not new law, *Watson* serves as a welcome reminder to establishments like bars & restaurants, retail stores, parks, entertainment venues, fitness centers and more: once a dangerous condition on the premises is discovered, it should be quickly and safely corrected. If final repairs cannot be done immediately and/or are not economically feasible, signage, barricades or other temporary precautionary measures should be implemented.

[1] Mo. Approved Jury Instr. (Civil) 31.16 (7th ed., Supp. 2018).

[2] Hon. Mary K. Hoff and Hon. Sherri B. Sullivan, concurring.

[3] *Boggs ex rel. Boggs v. Lay*, 164 S.W.3d 4, 21, (Mo.App. E.D. 2005).

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