

Court of Appeal of Manitoba
Martin v. St. Andrews (Rural Municipality)
Date: 1998-09-11

A.H. Dalmyn, for the appellant;

M.G. Finlayson and D.C. Rogers, for the respondent.

(AI 97-30-03552)

[1] **Lyon, J.A.** [orally]: It will not be necessary to hear from you, Mr. Finlayson. The court is unanimous in its judgment.

[2] We are not persuaded that the appellant has demonstrated any palpable error in the trial judge's findings of fact or in the application of the law to the facts as found which would justify appellate intervention.

[3] Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

1998 CarswellMan 436, 129 Man. R. (2d) 316, 180 W.A.C. 316

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1998 CarswellMan 436, 129 Man. R. (2d) 316, 180 W.A.C. 316

Martin v. St. Andrews (Rural Municipality)

Dale Martin (Plaintiff) Appellant and Rural Municipality of St. Andrews (Defendant) Respondent

Manitoba Court of Appeal

Lyon, Helper, Kroft J.J.A.

Oral reasons: September 11, 1998

Docket: AI 97-30-03552

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Proceedings: affirming (1997), 44 M.P.L.R. (2d) 145 (Man. Q.B.)

Counsel: *A. H. Dalmyn*, for the Appellant.

M. G. Finlayson and *D. C. Rogers*, for the Respondent.

Subject: Civil Practice and Procedure; Public

Highways and streets --- Nature and repair — Duty to repair — General

Plaintiff was injured in single motor vehicle accident — Plaintiff commenced action against municipality for negligence — Plaintiff alleged that accident was caused by municipality breaching duty to maintain road upon which accident took place — Action was dismissed — Trial judge ruled that municipality met its duty of keeping road in reasonable state of repair in that its condition at time of accident did not present unreasonable risk of harm — Judge also ruled that plaintiff failed to meet onus imposed by Highway Traffic Act on drivers involved in single vehicle accidents of proving that incident was not result of her own negligence — Plaintiff appealed — Appeal dismissed — Plaintiff did not demonstrate any palpable error in trial judge's findings of fact or in application of law — Highway Traffic Act, S.M. 1985-86, C.C.S.M. , c. H60.

Municipal law --- Actions involving municipal corporations — Municipal liability — Negligence — Failure to maintain property — General

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in single vehicle accidents of proving that incident was not result of her own negligence — Plaintiff appealed — Appeal dismissed — Plaintiff did not demonstrate any palpable error in trial judge's findings of fact or in application of law — Highway Traffic Act, S.M. 1985-86, C.C.S.M. , c. H60.

APPEAL by plaintiff from judgment reported at (1997), 44 M.P.L.R. (2d) 145 (Man. Q.B.) which dismissed her action against defendant municipality for negligence.

Lyon J.A. (for the Court):

1 It will not be necessary to hear from you, Mr. Finlayson. The Court is unanimous in its judgment.

2 We are not persuaded that the appellant has demonstrated any palpable error in the trial judge's findings of fact or in the application of the law to the facts as found which would justify appellate intervention.

3 Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

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