Public Use of Municipal Recreational Land

Recreational facilities, open space areas and public parks are concerns of most municipalities. Certainly, they are important to a municipality's purpose of providing for the "general welfare" of its citizenry. It, therefore, becomes important to know how, and to what degree, a municipality can be held liable for injuries to members of the general public that occur on municipal recreational land. The answer lies largely in the interplay and interpretation of two important statutes commonly referred to as the Recreational Use Act (RUA),[1] or the Recreational Use of Land and Water Act, and the Political Subdivision Tort Claims Act.[2]

The Recreational Use Act was originally enacted in 1965 and was intended primarily for private landowners as an incentive for them to open large tracts of land for the general public's use and enjoyment.[3] However, the act's protections also apply to political subdivisions, the Commonwealth and the United States.

The substance of the act is contained in Sections 3 and 4:

> Except as specifically recognized or provided in section 6 of this act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational users,[4] or to give any warning of a dangerous condition, use, structure, or activity on such premises to recreational users. . . . Except as specifically recognized by or provided in section 6 . . . an owner of land who either directly or indirectly invites or permits without charge any recreational user to use such property does not thereby:
>
> (1) Extend any assurance that the premises are safe for any purpose.
>
> (2) Confer upon such recreational user the legal status of an invitee or licensee to whom a duty of care is owed.
>
> (3) Assume responsibility for or incur liability for any injury to persons or property caused by an act of omission of a recreational user or landowner.
>
> (4) Assume responsibility for or incur liability for any injury to persons or property, wherever such persons or property are located, caused while hunting…..[5,6,7]

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[1] Act 586 of 1965 (68 P.S. § 477-1 et seq.).

[2] 42 Pa.C.S. § 8541 et seq.

[3] *See* Recreational Use Act, § 1; *see also Murtha v. Joyce,* 875 A.2d 1154 (Pa. Super. 2005).

[4] "Recreational user" means a person who enters or uses land for a recreational purpose. See Recreational Use Act, §2.

[5] "'Hunt' or 'hunting'" as defined in 34 (Game) Pa.C.S. § 102 (Definitions).

[6] Recreational Use Act, §§ 3, 4.

[7] Any negligence immunity granted by the state RUA to owner was not preempted by Federal Power Act, *Ruspi v. Glatz,* 69 A.3d 680 (Pa. Super. 2013).

The statute also provides explicit exceptions to the above-referenced general rule:

> Nothing in this act limits in any way any liability which otherwise exists:
>
> (1) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
>
> (2) For injury suffered in any case where the owner of land charges recreational user or users who enter or go on the land except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.[8]

Is the Land "Developed"? The RUA only provides immunity to landowners of "substantially undeveloped property." Therefore, the character of the municipal land where the injury occurred is important. "[C]ourts have held that the RUA did not provide tort immunity to owners of indoor swimming pools, highly developed waterfront parks, junior high school athletic fields, inner city playgrounds, and outdoor basketball courts. On the other hand, RUA tort immunity has been granted to National Parks, undeveloped portions of municipal public parks, and even parks which are somewhat developed, so long as any structures are intended to promote a recreational purpose anticipated by the RUA."[9] In determining liability under the RUA, both the tract as a whole and the exact portion of the tract where the injury occurred must be considered.[10]

In addition to the RUA, the law relating to governmental immunity, commonly referred to as the Political Subdivision Tort Claims Act, grants immunity to municipalities except under certain enumerated conditions. Section 8542(b)(3) provides that a local government unit may be liable for negligence related to the care, custody and control of real property in its possession. This liability, however, does not include acts that constitute actual malice or willful misconduct. The RUA only *imposes* liability for acts that constitute actual malice or willful misconduct.[11] Thus, it appears that a municipality has a powerful "catch-22" protection under the interplay of these two statutes: "[W]hether it acts maliciously or negligently, the municipality or other governmental unit is absolutely immune, without exception, for injuries occurring on municipally owned recreational land."[12] This blanket protection, as discussed above, would only apply if it is determined first that the land in question is deemed to be "substantially undeveloped."

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[8] Recreational Use Act, § 6.

[9] *Blake v. U.S.,* 1998 WL 111802, at *9 (E.D. Pa. 1998).

[10] *See Pagnotti v. Lancaster Tp.,* 751 A.2d 1226 (Pa. Cmwlth. 2000); *Yanno v. Consolidated Rail Corp.,* 744 A.2d 279 (Pa. Super. 1999).

[11] *See* Recreational Use Act § 6.

[12] *Wilkinson v. Conoy Twp.,* 677 A.2d 876, 879 (Pa. Cmwlth. 1996).