

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1366

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CHRISTOPHER MUELLER,

Plaintiff-Appellant,

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES and its agent,
DUNN COUNTY,**

Involuntary-Plaintiff,

v.

GERALD MILLER,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Dunn County:
JAMES A. WENDLAND, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Christopher Mueller appeals a judgment dismissing his personal injury action against Gerald Miller, a custodian employed by the University of Wisconsin-Stout. Mueller fell on ice or snow while crossing an uncleared paved area between a ramp and a bicycle rack. The trial court ruled that Miller was protected by governmental immunity. Mueller argues that governmental immunity does not apply because Miller's snow-clearing duties were ministerial, not discretionary, and because the accumulated snow presented a "known present danger." We reject these arguments and affirm the judgment.

A state employee, such as Miller, is protected from civil liability for negligent acts within the scope of his employment unless the duty he violated is purely ministerial in nature. *Lister v. Board of Regents*, 72 Wis.2d 282, 300-01, 240 N.W.2d 610, 621-22 (1976). Ministerial duties arise under either of two conditions: (1) the law imposes, prescribes and defines the time, mode, and occasion for the duty's performance with such certainty that nothing remains for the exercise of his judgment and discretion; or (2) a "known present danger" of such force exists that the danger itself defines the time, mode, and occasion for the duty's performance with such certainty that nothing remains for the exercise of the officer's judgment and discretion. *C.L. v. Olson*, 143 Wis.2d 701, 710, 422 N.W.2d 614, 617 (1988).

Mueller argues that a ministerial duty was created by a city ordinance that required removal of snow from some surfaces within twenty-four hours. The state is not bound by the city's ordinance. See *Milwaukee v. McGregor*, 140 Wis. 35, 37, 121 N.W. 642, 642 (1909). No law applicable to the state created a ministerial duty to remove snow.

Mueller argues that the failure to remove the snow presented a known present danger. In *Cords v. Anderson*, 80 Wis.2d 525, 541-42, 259 N.W.2d 672, 672 (1977), the court held that governmental immunity did not apply to a state employee who had knowledge of the uniquely dangerous terrain of a path passing close to a ninety-foot gorge because the danger itself created a circumstance in which the employee had a nondiscretionary duty to barricade the path or provide warning to its users. The accumulation of snow and ice does not create a comparable danger known or appreciated only by the custodian. The dangers of a slippery walkway are a matter of general common knowledge.

By the Court. — Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.