COURT OF APPEALS
DECISION
DATED AND FILED

June 20, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 99-3183-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

DORIS M. HOOPINGARNER AND ROBERT D. HOOPINGARNER,

PLAINTIFFS-APPELLANTS,

V.

TOWN OF LAKEWOOD AND WAUSAU UNDERWRITERS INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS,

HUMANA, INC.,

DEFENDANT.

APPEAL from an order of the circuit court for Oconto County: RICHARD DELFORGE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Doris Hoopingarner appeals a summary judgment that dismissed her personal injury lawsuit against the Town of Lakewood.[1] Hoopingarner slipped and fell on a snow and ice covered pedestrian walkway located at the Nicolet Medical and Dental Clinic. The walkway runs from the clinic over an asphalt parking lot, simply painted on the asphalt with yellow lines. The Town owned the walkway and leased it to the clinic. The parties agree that no snow or ice had accumulated on the walkway for three continuous weeks. On that basis, the trial court ruled that WIS. STAT. § 81.15[2] afforded the Town immunity. The statute bars lawsuits for injuries arising from "highway" snow or ice accumulations of less than three weeks' duration.

¶2 Hoopingarner makes two arguments on appeal: (1) the walkway was not a "highway" within the meaning of the highway immunity statute; and (2) the walkway led to a private enterprise and was thereby subject to the safe place statute, not the highway statute. We reject these arguments and affirm the summary judgment.

¶3 WISCONSIN STAT. § 81.15 provides that "no action may be maintained to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed for three weeks." If the language of a statute is unambiguous, we merely apply the statute to the facts of the case. *See* ***MCI Telecomm. Corp. v. State***, 203 Wis. 2d 392, 400, 553 N.W.2d 284 (Ct. App. 1996). Interpretation of a statute is a legal question, subject to de novo review. *See* ***Minuteman, Inc. v. Alexander***, 147 Wis.

[1] This is an expedited appeal under WIS. STAT. RULE 809.17 (1997-98).

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

2d 842, 853, 434 N.W.2d 773 (1989). We read the words in a statute to effect their plain and ordinary meaning. *See* ***State v. Mendoza***, 96 Wis. 2d 106, 114, 291 N.W.2d 478 (1980). If a general statute conflicts with a specific statute, the specific one prevails. *See* ***Froebel v. DNR***, 217 Wis. 2d 652, 672, 579 N.W.2d 774 (Ct. App. 1998). Summary judgment is appropriate on statutory issues if there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

¶4 First, Hoopingarner argues that the highway statute does not apply to the walkway. She maintains that it covers only sidewalks lying adjacent to a highway. She cites other cases that apply the statute to sidewalks near highways. *See, e.g.,* ***Webster v. Klug & Smith***, 81 Wis. 2d 334, 260 N.W.2d 686 (1978); ***Damaschke v. City of Racine***, 150 Wis. 2d 279, 441 N.W.2d 332 (Ct. App. 1989). We reject this argument. Hoopingarner cites no authority for this position, and we know of none. We do not consider controlling the fact that other sidewalk immunity cases have concerned sidewalks near highways. The location of the sidewalk in relation to the highway was not at issue in those cases. The courts in those cases never made this circumstance a condition of their holdings. Also, the highway statute contains no such limitation. *See* WIS. STAT. § 81.15. If the legislature wanted to limit immunity to sidewalks adjacent to highways, it could have expressly placed this limitation in the statute. Rather, it has made a broad grant of immunity for highway snow accumulation, and the courts have applied that to sidewalks, without later legislative modification.

¶5 Hoopingarner also argues that because the walkway leads to a private enterprise, the safe place statute, not the highway statute, applies. We are not persuaded. The walkway is not a place of employment, and the safe place

statute applies to places of employment. *See* ***Crowbridge v. Village of Egg Harbor***, 179 Wis. 2d 565, 572, 508 N.W.2d 15 (Ct. App. 1993). Additionally, we resolve any conflict between these laws in favor of the highway statute. Specific statutes control over general ones, *see* ***Froebel***, 217 Wis. 2d at 672, and snow accumulation is a more specific public safety issue than the generic safety concerns of the safe place statute. Moreover, the legislature has specifically cloaked towns with immunity for highway snow, expressly furnishing them three weeks to discover and remove any accumulation. The legislature has not charged towns with safe place liability for highway snow. The legislature has plainly given immunity to a municipality in the area of highway snow accumulation. *Cf.* ***Strong v. Wis. Chap. of Delta Upsilon***, 125 Wis. 2d 107, 110, 370 N.W.2d 285 (Ct. App. 1985) (recreational immunity more specific, controls over safe place statute).

By the Cour..—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.