

**IN THE COURT OF APPEALS FOR THE STATE OF KANSAS**

**BRENDA ZARAGOZA**

Appellant,

v.

**BOARD OF COMMISSIONERS  
OF THE COUNTY OF JOHNSON**

Appellee.

County Appealed From: Johnson  
District Court Case No: 21CV03636  
Proceeding Under Chapter: 60  
Party Filing Appeal: Brenda Zaragoza  
Party Who Will Appear As Appellee: Board of  
Commissioners of the County of Johnson

**DOCKETING STATEMENT – CIVIL**

1. **Civil Classification Torts:** Personal Injury - Premises liability.
2. **Proceedings in the District Court:**
  - a. Trial judge from whose decision this appeal is taken: Honorable Rhonda K. Mason
  - b. List any other judge who has signed orders or conducted hearings in this matter: N/A.
  - c. Was this case disposed of in the district court by:
    - Jury trial**
    - Bench trial**
    - Summary judgment**
    - Dismissal**
    - Other**
  - d. Length of trial, measured in days: N/A.
  - e. State the name of each court reporter or transcriptionist who has reported or transcribed any and all of the record for the case on appeal: Madeline R. Williams, RPR.
  - f. State the legal name of all entities that are NOT listed in the case caption (including corporations, associations, parent, subsidiary, or affiliate business entities) but are parties or have a direct involvement in the case on appeal: None.
  - g. State the name, address, telephone number, fax number and e-mail address of every attorney who represented a party in the district court if that attorney’s name does NOT appear on the certificate of service attached to this docketing statement. Clearly identify each party represented.: N/A.
3. **Jurisdiction:**
  - a. Date of Journal Entry, judgment form, or other applicable order filed: May 16, 2023

- b. Is the order appealed from a final order, *i.e.*, does it dispose of the action as to all claims by all parties? Yes.
  - c. If the order is not a final disposition as to all claims by all parties, did the district court direct the entry of judgment under K.S.A. 60-254(b)? N/A.
  - d. Date of any posttrial motion filed: N/A.
  - e. Date disposition of any post trial motion filed: N/A.
  - f. Date of notice of appeal filed in district court: June 15, 2023
  - g. Other relevant dates necessary to establish this court's jurisdiction to hear appeal, *i.e.*, decisions of administrative agencies or municipal courts appeals therefrom: N/A.
  - h. Statutory authority of appeal: KSA § 60-2101(a) and 60-2102(a).
  - i. Are there any proceedings in any other court or administrative agency, state or federal, which might impact this case or this court having jurisdiction? No.
4. **Constitutional Challenges to Statutes or Ordinances:** Was any statute or ordinance found to be unconstitutional by the district court? No.
5. **Related Cases/Prior Appeals:**
- a. Is there any case pending or about to be filed in the Kansas appellate courts which:
    - 1) Arises from substantially the same case as this appeal (yes or no)? No.
    - 2) Involves an issue that is substantially the same as, similar to, or related to an issue in this appeal? No.
  - b. Has there been a prior appeal involving this case or controversy? No.
6. **Brief statement (less than one page), without argument, of the material facts.** On July 18, 2020, Brenda Zaragoza drove to the Monticello branch of the Johnson County Library to check out materials. She parked in the Library parking lot, walked from her car to the Library, selected materials, and then returned to her car. She took the most direct path from the Library sidewalk to her car. As she stepped down, she did not know and could not tell that the parking lot was heavily sloped downward from her left to her right and also sloped backwards towards the curb. The slope was difficult to detect because of the lack of color differentiation between the curb and the parking lot. Due to the unexpected slope of the parking lot, Ms. Zaragoza fell and suffered fractures in her heel, ankle, and knee. The Board of Directors of the Johnson County Library oversees the Monticello Branch Library, although the only legal entity that may be sued is The Board of County Commissioners of the County of Johnson. K.S.A. 12-1223(b). There is evidence that the Library parking lot was not built in conformity with the architectural plans and that this contributed to Plaintiff's fall. There is evidence the Library was aware that a similar parking lot condition near the area of Plaintiff's fall had resulted in falls by other patrons. The Library modified the nearby dangerous condition, but not the dangerous condition where Plaintiff fell. The Defendant contends that it is not liable for any negligence relating to the Library parking lot because the parking lot is adjacent to the Library and Defendant argues that the Library should be classified as a recreational use.

After discovering that the Library had known of and corrected a similar dangerous condition near the location of where Plaintiff fell, Plaintiff moved to amend her petition to add a claim for gross and wanton negligence. The District Court denied Plaintiff's motion to amend. Defendant filed a motion for summary judgment. The District Court found the Library to be a recreational use and denied Plaintiff's request for leave to amend as untimely even though Plaintiff moved to amend within 2 weeks of receiving the deposition transcripts of the Defendant's corporate representatives who testified to the facts supporting the proposed amendment to the Petition. The District Court found that the Library has immunity for ordinary negligence and declined to consider the evidence of gross and wanton negligence provided by Plaintiff in the motion to amend.

7. **Concise statement of the issues proposed to be raised.** Plaintiff anticipates raising the following issues. The District Court's summary judgment should be reversed because 1) The Kansas Tort Claims Act recreational use immunity does not protect the Library from liability in this case because neither the Library nor the adjacent parking lot should be considered a recreational use. Even if the recreational use immunity was applied, there is sufficient evidence of gross and wanton negligence that summary judgment is not legally supportable. K.S.A. §75-6104(o); 2) The law and evidence supports the Plaintiff's motion to amend to assert gross and wanton negligence and the District Court's denial of the motion should be reversed; 3) Plaintiff timely moved to amend to assert gross and wanton negligence of the Defendant by filing its motion to amend promptly after discovering new evidence supporting the claim; 4) Plaintiff's initial petition was sufficient to support a claim for gross and wanton negligence; 5) The Defendant's interpretation of the recreational use immunity would cause immunity to become the rule and not the exception directly contradicting Kansas Supreme Court precedent. The Library's suggested application of the recreation use immunity would virtually eliminate government liability; 6) the Library parking lot is not an integral part of any recreational use of the Library and there is no evidence of a contemporaneous recreational use of the Library by any person at the time of Plaintiff's injury. Plaintiff anticipates that other related issues will be raised in the appeal.

Respectfully submitted,

**MOREFIELD SPEICHER BACHMAN, LC**

*/s/ Richard W. Morefield*

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**ATTORNEY FOR APPELLANT**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this Docketing Statement was served by United States mail, postage prepaid, on the 10<sup>th</sup> day of August 2023 to:

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*/s/ Richard W. Morefield*  
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