State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 22, 2011 512385

VANCE C. WRIGHT,
Appellant,
v MEMORANDUM AND ORDER

KATHRYN REZENDEZ et al.,
Defendants,
and

TOWN OF FORT EDWARD,
Respondent.

Calendar Date: October 14, 2011

Before: Spain, J.P., Rose, Kavanagh, Stein and Garry, JJ.

Mills Law Firm, L.L.P., Clifton Park (Christopher K. Mills of counsel), for appellant.

Shantz & Belkin, Latham (M. Randolph Belkin of counsel), for respondent.

Kavanagh, J.

Appeal from an order and judgment of the Supreme Court (Pritzker, J.), entered September 9, 2010 in Washington County, which, among other things, granted a motion by defendant Town of Fort Edward for summary judgment dismissing the complaint against it.

Plaintiff commenced this negligence action against defendant Town of Fort Edward and contingent property owners for injuries he sustained when he fell on a Town sidewalk that had been covered with ice and snow. The Town moved for summary

judgment dismissing plaintiff's complaint as well as the cross claims filed against it by the property owner defendants. Supreme Court granted the Town's motion, and plaintiff appealed.

We affirm. An action cannot be maintained against a town for injuries sustained as the result of a fall caused by snow or ice on sidewalks owned by the town, "unless written notice thereof, specifying the particular place, was actually given to the town clerk or to the town superintendent of highways" (Town Law § 65-a [2]). For the purposes of the appeal, plaintiff concedes that no written notice was provided to the Town regarding the condition that caused his fall, but argues that Town Law § 65-a (2) was superceded by a local law of the Town, which only requires written notice of dangerous conditions caused by ice and snow on "any highway, bridge or culvert" located within the Town (Code of Town of Fort Edward § 85-1 [b]). Plaintiff argues that since this local law does not include sidewalks, no written notice was required.

We cannot agree. When a municipality adopts a local law that is intended to supercede a state statute, such intent must be clearly and unequivocally expressed in the body of the local law (see Municipal Home Rule Law §§ 10, 22; Kamhi v Town of Yorktown, 74 NY2d 423, 429, 434 [1989]). Here, the local law in question makes no reference to Town Law § 65-a, nor is there any indication that the Town, when it enacted it, did so with the intent of removing the limitations on its liability as set forth in the Town Law (compare Wall v Town of Niskayuna, 14 AD3d 988, 989 [2005], lv denied 5 NY3d 701 [2005]). As such, defendant's motion for summary judgment dismissing the complaint against it was properly granted. As a result of this conclusion, we need not address plaintiff's additional argument.

Spain, J.P., Rose, Stein and Garry, JJ., concur.

ORDERED that the order and judgment is affirmed, without costs.

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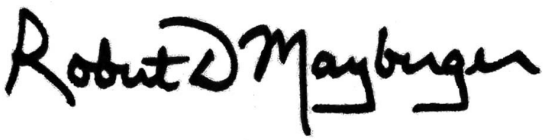

Robert D. Mayberger
Clerk of the Court