

LYNN HUBBARD BERNARD

v.

TOWN OF NORTH BERWICK

Argued October 19, 2004

Decided December 2, 2004

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Lynn Hubbard Bernard appeals from a summary judgment entered for the Town of North Berwick in the Superior Court (York County, *Brennan, J.*). In this action for personal injuries caused by a falling tree branch, Bernard concedes that the Town was not liable to her under the Highway Defect Act, 23 M.R.S.A. §§ 3651-3655 (1992). Even if, as Bernard contends, the court erred in determining that the Act exclusively governed her claim, it did not err in concluding that she failed to demonstrate that the Town owed a duty to her to inspect and maintain the tree. For this reason, she has no cause of action for negligence against the Town,

and the insurance waiver provision of the Maine Tort Claims Act, 14 M.R.S.A. § 8116 (2003), is inapplicable.

The entry is:

Judgment affirmed.

Attorneys for appellant:

Randall E. Smith, Esq.
Aaron P. Burns, Esq. (orally)
Smith Elliott Smith & Garmey, P.A.
199 Main Street
Saco, ME 04072

Attorney for appellee:

Thomas R. Kelly, Esq. (orally)
Robinson Kriger & McCallum
Twelve Portland Pier
Portland, ME 04112-0568