Court of Appeals, State of Michigan

ORDER

Karen Spors v State of Michigan

Docket No. 353216

LC No. 2018-000142-MZ

Michael F. Gadola
Presiding Judge

Patrick M. Meter

Amy Ronayne Krause
Judges

The application for leave to file a delayed appeal is DENIED for lack of merit in the grounds presented.

Presiding Judge

Ronayne Krause, J., would peremptorily reverse the trial court's order granting summary disposition and states:

It has been long established that complaints must be read as a whole with a focus on substance over technicality. *Altobelli v Hartmann*, 499 Mich 284, 303; 884 NW2d 537 (2016). More importantly, it has also been long established that allegations in a complaint should be read fairly and substantively, rather than technically, to determine whether they merely provide reasonable notice to any opposing party. *Enright v Hartsig*, 46 Mich 469, 470-471; 9 NW 496 (1881); *Stowell v Standard Oil Co*, 139 Mich 18, 23-24; 102 NW2d 227 (1905); *Creen v Michigan Cent Ry Co*, 168 Mich 104, 110; 133 NW 956 (1911); *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992). Although the complaint in this matter is perhaps inartful, the trial court clearly applied an improperly hypertechnical reading.

The complaint alleges that plaintiff was walking "along" an asphalt road that was described as "an improved roadway" intended for vehicular traffic, and that she was "about two feet from the edge." She fell into a "pothole" that "was not readily discernable with the naked eye by a person traveling *on the road* keeping a watchful eye for both vehicular and pedestrian traffic." (Emphasis added.) Based on her description of falling in a "pothole," and her allegation that there were "no bike or pedestrian paths along side the road," and her statement in another averment that she "was on the asphalt road when she slipped and fell," plaintiff was clearly walking on the paved surface. Her need to watch for traffic indicates that she was walking on the portion of the road designed and intended for vehicular travel. The lack of any paths alongside the road, her description of the road as intended for campers to drive around in the park, and any experience with actual parks, further suggests that there was no portion of the road not designed and intended for vehicular travel; i.e., there was no shoulder upon which plaintiff could have been walking.

Cf. *Yono v Dep't of Transportation*, 499 Mich 636, 650-652; 885 NW2d 445 (2016) (distinguishing portion of the road capable of supporting vehicular travel from portion of the road designed for vehicular travel).

Plaintiff specifically alleged that defendant was not entitled to immunity under MCL 691.1404 (notice of injury) because she gave defendant proper timely notice; and defendant is not entitled to immunity under MCL 691.1403 (prior notice of defect) because when plaintiff reported her injury, a park officer remarked that someone else had been injured in the same spot. The trial court even properly recognized that plaintiff was, albeit by implication, invoking the highway exception to governmental immunity.

Again, the complaint is not perfectly drafted, but the trial court unambiguously erred in concluding that plaintiff failed to plead in avoidance of governmental immunity.