STATE OF MICHIGAN

COURT OF APPEALS

RONALD L. JURY and CAROL J. JURY,

Plaintiffs–Appellants,

v

ST. CLAIR COUNTY ROAD COMMISSION,

Defendant–Appellee.

UNPUBLISHED
April 19, 1996

No. 172675
LC No. 91-000073-NI

Before: Sawyer, P.J., and Young and S.B. Neilson,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court order granting summary disposition to defendant under MCR 2.116(C)(8) (failure to state a claim) and 2.116(C)(10) (no genuine issue of material fact). We affirm.

This case involves the "highway exception" to the governmental immunity statute, MCL 691.1402; MSA 3.996(102). Plaintiffs live at the terminus of a "T" type junction in Port Huron. A car failed to stop at that junction, left the roadway, and struck the bedroom of plaintiffs' house. Plaintiffs were in that room at the time, and they sustained serious injuries.

Plaintiffs' complaint alleged actions in negligence and nuisance.[1] In particular, plaintiffs alleged that the county was negligent in failing to erect a guardrail sufficient to keep cars out of plaintiffs' house; the design of the intersection was negligent; and the county did not adequately warn that the roadway ended.

Defendant erected a series of wooden posts in an apparent effort to keep cars from leaving the roadway. Plaintiffs' expert opined that defendant should have installed a standard metal guardrail.

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* Circuit Judge, sitting on the Court of Appeals by Assignment

A. Defective Guardrail

Although *Chaney v Dep't of Transportation*, 447 Mich 145; 523 NW2d 762 (1994), was decided by multiple opinions, the combined opinions of five justices support the application of governmental immunity on plaintiffs' theory of a defective guardrail. Chaney's motorcycle left a highway entrance ramp and struck either a bridge abutment or guardrail. Chaney was thrown over a bridge railing and sustained injuries. He alleged that the state negligently designed and constructed the bridge railing, negligently failed to inspect the entrance ramp for dangerous conditions, and failed to provide adequate warnings of dangers on the ramp.

Justice Brickley wrote that the bridge abutment and guardrail were not part of the improved portion of highway designed for vehicular travel, nor installations integrally and directly affecting safe vehicular travel upon the improved portion. Therefore, Justice Brickley concluded, the state was not liable for Chaney's crash into them. 447 Mich at 152. Justice Boyle disagreed with Justice Brickley's reliance on the concept of installations that "directly and integrally affect safe vehicular travel" but joined in finding that the guardrail and abutment were not part of the improved portion of highway designed for vehicular travel, and therefore agreed that governmental immunity was invoked. *Id*. at 171. Justice Riley took a different tack, concluding that under the statute liability extends only where "the physical highway is unreasonably unsafe because of physical disrepair of the improved portion of the road designed for vehicular travel." *Id*. at 166. Justice Griffin joined the opinion, and in a separate opinion, Justice Cavanagh adopted that view. *Id*. at 177.

Thus, five justices adopted viewpoints which would require that immunity be extended under these facts. The circuit court did not err in granting summary disposition on plaintiffs' theory of negligence involving the wooden posts or the absence of a more effective guardrail. See also *Zwolinski v Dep't of Transportation (After Remand)*, 210 Mich App 496; 534 NW2d 163 (1995).

B. Negligent Roadway Design

Plaintiffs also argue that they presented a theory of negligent roadway design involving the "T" junction. Their expert witness, however, testified in deposition that he found "no fault" in the "geometry" of the road, the pavement conditions, or the traffic control devices. Plaintiffs presented no other evidence to support their claim that the roadway was defectively designed. Therefore, there was no genuine issue of material fact about the roadway. The circuit court did not err by granting summary disposition under MCR 2.116(C)(10).

C. Failure to Warn

Plaintiffs' third theory was that the county negligently failed to warn of the impending end of the roadway. Again, we find that summary disposition was properly granted. Plaintiffs' expert testified that he found no fault in the traffic control devices, so summary disposition was appropriate under MCR 2.116(C)(10). In addition, summary disposition was proper under MCR 2.116(C)(8). A county road

commission is immune from a lawsuit based on a failure to place warning signs at an allegedly hazardous intersection. *Pick v Gratiot County Road Comm'n*, 203 Mich App 138, 141; 511 NW2d 694 (1993).

Affirmed.

/s/ David H. Sawyer
/s/ Robert P. Young, Jr.
/s/ Susan Bieke Neilson

[1] Plaintiffs have not appealed the dismissal of their nuisance claims.