

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS OLEKSIK and DONNA OLEKSIK,

Plaintiffs-Appellants,

v

CITY OF HAMTRAMCK,

Defendant-Appellee,

and

WAYNE DEPARTMENT OF PUBLIC
SERVICES COUNTY,

Defendant.

UNPUBLISHED

July 19, 1996

No. 181774

LC No. 94-403896-NO

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

In this personal injury action, plaintiffs appeal by right an order granting defendant City of Hamtramck's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm.

Plaintiff Dennis Oleksiak allegedly sustained injury after stepping into a pothole on a portion of Joseph Campau Road that was temporarily closed to vehicular traffic for the thirteenth annual "Hamtramck Festival." Defendant City of Hamtramck, by resolution of its city council, caused the relevant section of Joseph Campau to be closed to vehicular traffic for the annual festival. The Hamtramck Festival Committee leased space on Joseph Campau Road to private vendors during the Labor Day Festival. The Hamtramck Festival Committee was owned by Hamtramck City Mayor Robert Kozaren, not defendant City of Hamtramck. Defendant Wayne County had assumed jurisdiction over the relevant portion of Joseph Campau Road in 1952.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant City of Hamtramck moved for summary disposition, claiming governmental immunity and that it had no jurisdiction over or obligation to repair Joseph Campau Road. The trial court agreed and granted summary disposition in defendant City of Hamtramck's favor pursuant to MCR 2.116(C)(7) and (10).

On appeal, plaintiff contends that the trial court erred in finding that defendant City of Hamtramck was engaged in a governmental function and, hence, immune from liability pursuant to MCL 691.1407; MSA 3.996(107). We disagree. In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), we must accept plaintiff's well-pleaded allegations as true, *Shawl v Dhital*, 209 Mich App 321, 323; 529 NW2d 661 (1995); *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 252; 506 NW2d 562 (1993), and examine any pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties in a light most favorable to the nonmovant. MCR 2.116(G)(5); *Skotak v Vic Tanny Int'l, Inc*, 203 Mich App 616, 617; 513 NW2d 428 (1994). If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the trial court must enter judgment without delay. MCR 2.116(I)(1); *Skotak, supra* at 617; *Nationwide Mutual Ins Co v Quality Builders, Inc*, 192 Mich App 643, 647-648; 482 NW2d 474 (1992).

Under MCL 691.1407; MSA 3.996(107), governmental entities are immune from tort liability where they are engaged in the exercise or discharge of a governmental function. *Payton v Detroit*, 211 Mich App 375, 391-392; 536 NW2d 233 (1995). A "Governmental function" is an activity which is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f); MSA 3.996(101)(f); see *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984); *Codd v Wayne Co*, 210 Mich App 133, 135; 537 NW2d 453 (1995). This definition is "broadly applied; there need only be some constitutional, statutory, or other legal basis for the activity in which the governmental agency is engaged." *Baker v Waste Mgt of MI, Inc*, 208 Mich App 602, 607; 528 NW2d 835 (1995); *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 97; 494 NW2d 791 (1992). Const 1963, art 7, § 22 provides municipalities the authority to adopt resolutions and ordinances for municipal concerns. See *Central Advertising v Novi*, 91 Mich App 303, 313; 283 NW2d 730 (1979).

Here, the Hamtramck Festival Committee, not defendant City of Hamtramck, handled any proprietary interest in the festival. Defendant City of Hamtramck simply passed resolutions to restrict vehicular traffic, control alcohol-related activities, and provide security for a local Labor Day festival. In resolving to affect these public safety measures, the city was clearly engaged in a "governmental function" as contemplated by MCL 691.401(f); MSA 3.996(101)(f). Cf. *Hyde v Univ of Michigan Bd of Regents*, 426 Mich 223, 252-253; 393 NW2d 847 (1986); *Adam, supra* at 97.

Next, plaintiff contends that defendant City of Hamtramck had "concurrent" or "temporary" jurisdiction over Joseph Campau Road and that the highway exception to governmental immunity therefore applied. We disagree. We review the trial court's ruling on a motion for summary disposition de novo to determine whether the pleadings or the uncontroverted documentary evidence establish that

defendant is entitled to judgment as a matter of law. MCR 2.116(I)(1); *Kennedy v Auto Club of Michigan*, 215 Mich App 264, 266; 544 NW2d 750 (1996). The existence of either circumstance merits a grant of summary disposition. *Kennedy, supra* at 266.

“The defective highway exception to governmental immunity applies where a governmental agency’s failure to maintain in reasonable repair a highway *under its jurisdiction* causes bodily injury. MCL 691.1402; MSA 3.996(102).” *Listanski v Canton Charter Twp*, 206 Mich App 356, 358; 523 NW2d 229 (1994) (emphasis added). Action may not be maintained under this exception unless it is clearly within the scope and meaning of the statute. *Scheurman v Dep’t of Transportation*, 434 Mich 619, 630; 456 NW2d 66 (1990). In *Markillie v Livingston Co Bd of Rd Comm’rs*, 210 Mich App 16, 19-20; 532 NW2d 878 (1995), this Court held:

The governmental immunity act limits liability under the highway exception to the governmental agency having jurisdiction over the highway at the time of the injury. *Fuller v Dep’t of Transportation*, 168 Mich App 682, 684; 425 NW2d 693 (1988). Only one governmental agency can have jurisdiction over a highway at any time; there is no concurrent jurisdiction. *Mitchell v Steward Oldford & Sons, Inc*, 163 Mich App 622, 632; 415 NW2d 224 (1987).

See generally *Berry v Belleville*, 178 Mich App 541, 547; 444 NW2d 222 (1989).

Applying these principles to the present case, we conclude that the trial court correctly ruled that defendant City of Hamtramck had no jurisdiction over and no responsibility for maintaining Joseph Campau Road. Plaintiff concedes that defendant Wayne County assumed jurisdiction over the road long before plaintiff’s accident. Plaintiff provides no facts to suggest that defendant Wayne County transferred jurisdiction over the road back to defendant City of Hamtramck pursuant to the transfer of jurisdiction act, MCL 247.858; MSA 9.393(38). Nor does plaintiff present any documentary evidence that defendant City of Hamtramck, by resolution or otherwise, assumed jurisdiction over or undertook responsibility to maintain Joseph Campau Road. Even if defendant City of Hamtramck assumed the responsibility for cleaning up Joseph Campau Road after the festival, that would be insufficient to vest defendant City of Hamtramck with jurisdiction over the road. See *Kuhn v Associated Truck Lines, Inc*, 173 Mich App 295, 300; 433 NW2d 424 (1988). Therefore, defendant Wayne County – not the City of Hamtramck – had jurisdiction over Joseph Campau Road. See *Markillie, supra* at 19-20; *Mitchell, supra* at 632. Accordingly, summary disposition was properly granted on the ground that defendant City of Hamtramck had no responsibility to repair the pothole in Joseph Campau Road that, according to plaintiff, developed several years before his accident.

Affirmed.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Meyer Warshawsky

