

STATE OF MICHIGAN
COURT OF APPEALS

MARK SOULE,

Plaintiff-Appellant,

v

MACOMB COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED

August 23, 1996

No. 173274

LC No. 89-002737-NI

Before: Wahls, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this action involving the defective highway exception to governmental immunity. We affirm.

Plaintiff's car stalled on Armada Center Road in Macomb County. Plaintiff got out of his car to accept a "jump start" from a truck. While his car was still in the traffic lane, it was hit by another car. Plaintiff was injured when he was pinned between his car and the truck that was giving him a jump start.

Plaintiff brought suit alleging that defendant had breached its statutory duty to maintain reasonably safe roadways. The trial court granted defendant's motion for summary disposition, which was brought pursuant to MCR 2.116(C)(7), (8), and (10). This Court affirmed the trial court's disposition as to plaintiff's claims of failing to construct a shoulder and maintaining excessively steep banks. *Soule v Macomb Co Bd of Rd Comm'rs*, 196 Mich App 235; 492 NW2d 783 (1992). However, because the trial court had not addressed the issue of defendant's alleged failure to post speed limit signs, we remanded for further proceedings. *Id.*, p 238.

On remand, defendant moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted defendant's motion, holding that plaintiff had not presented sufficient evidence to support his theory of liability. Plaintiff's theory on remand was that the conditions of the roadway required defendant to change the speed limit and to post notice of the changed limit. However, this Court remanded only "for a determination whether defendant breached its duty to maintain reasonably safe roadways by allegedly failing to post speed-limit signs along the relevant portion of Armada Center

Road.” *Soule, supra*, p 238. The portion of the trial court’s decision addressing defendant’s alleged duty to change the speed limit was not properly before the trial court since it was beyond the scope of the directive on remand. *Mitchell v Cole (After Remand)*, 196 Mich App 675, 679; 493 NW2d 427 (1992). Accordingly, we do not address it here. *Id.*

Generally, governmental agencies are immune from tort liability when engaged in a governmental function. MCL 691.1407(1); MSA 3.996(107)(1). However, the defective highway exception to governmental immunity imposes a duty on county road commissions to maintain highways under their jurisdiction in reasonable repair. MCL 691.1402(1); MSA 3.996(102)(1). Pursuant to this exception, a duty arises to provide adequate warning signs or traffic control devices at known points of hazard. *Pick v Szymczak*, ___ Mich ___; ___ NW2d ___ (No. 98142, issued 6/5/96) slip op p 11.

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; ___ NW2d ___ (1996). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

Here, plaintiff’s expert testified that a variety of factors made the fifty-five mile per hour speed limit unsafe. However, as stated *supra*, the adequacy of that speed limit was beyond the scope of this Court’s remand. Rather, the question upon remand was whether defendant had a duty to post signs of the existing speed limit of fifty-five mph. Even if we assume *arguendo* the existence of such a duty, when we view the evidence in a light most favorable to plaintiff, there was no genuine issue of material fact that that the failure to post a speed limit was a cause in fact or a proximate cause of plaintiff’s injuries. The approaching driver testified that she was going between forty-five and fifty mph at the time of the accident. There was no testimony that she was exceeding the speed limit at the time or immediately before she struck plaintiff’s car. Accordingly, the trial court did not err in granting defendant’s motion for summary disposition. *Wechsler v Wayne Co Rd Comm*, 215 Mich App 579, 596, 600; ___ NW2d ___ (1996).

Moreover, a governmental agency is protected from liability unless there is actual or constructive knowledge of a defect and reasonable time to repair it. *Haas v City of Ionia*, 214 Mich App 361, 363; 543 NW2d 21 (1995). Here, even if there were a genuine issue of material fact as to causation, there was no genuine issue of material fact that any alleged point of hazard was known to defendant. Rather, any hazard was caused by plaintiff’s car temporarily stopping in the middle of the road. There was no evidence that defendant knew of this condition or had reasonable time to repair it. Accordingly, the trial court did not err in granting defendant’s motion for summary disposition. *Id.*

Affirmed.

/s/ Myron H. Wahls

/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell