

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

MICHAELINE GILLICK

Plaintiff-Appellee,

v

CITY OF ST. CLAIR SHORES,

Defendant-Appellant.

---

UNPUBLISHED

September 17, 1996

No. 179837

LC No. 93-006003

Before: Jansen, P. J., and Reilly, and M.E. Kobza,\* JJ.

PER CURIAM.

Defendant appeals by leave granted a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10) in this case involving the highway exception to governmental immunity. We reverse.

On the evening of January 3, 1991, plaintiff and her daughter went to the St. Clair Shores Public Library. Plaintiff parked her car in the library parking lot, and she and her daughter went into the library. After leaving the library, plaintiff and her daughter began walking toward the car. Plaintiff slipped and fell on a piece of ice and sustained injuries. On December 17, 1993, plaintiff filed this action alleging that her injuries were a result of defendant's gross negligence in failing to maintain the "public drive" where she fell, and in violating defendant's statutory obligation with respect to maintenance of the public drive, contrary to MCL 691.1402; MSA 3.996(102).

Defendant filed a motion for summary disposition in which it argued that plaintiff's claims were barred (1) by governmental immunity because the highway exception, MCL 691.1402; MSA 3.996(102), does not extend to parking lots, and (2) by the statute of limitations, MCL 691.1411(2); MSA 2.996(111)(2). Plaintiff asserted that the fall occurred in a public drive and that defendant was estopped from asserting the statute of limitations as a defense. The court agreed with plaintiff that defendant was estopped from asserting the statute of limitations and held that a genuine issue of material fact existed as to whether plaintiff fell in a parking lot or a public drive. With the latter determination, we disagree, and accordingly, we reverse the order denying defendant's motion for summary disposition.

---

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

The primary issue in this case concerns whether the location of plaintiff's fall should be deemed a parking lot or a highway for the purposes of the highway exception to governmental immunity. Under MCL 691.1401(e); MSA 3.996 (101)(e), "highway" is defined as:

[E]very public highway, road, and street which is open for public travel and shall include bridges, sidewalks, crosswalks, and culverts on any highway. The term highway does not include alleys, trees and public utility poles.

In *Bunch v City of Monroe*, 186 Mich App 347; 463 NW2d 275 (1990), this Court held that a municipal parking lot is not within the highway exception to governmental immunity. Thus, plaintiff argues that the area should be deemed a highway, and defendant argues that it is a parking lot.

We agree with plaintiff that her references to the location of the fall as a "parking lot" in statements made before litigation are not dispositive of whether her claim is barred by governmental immunity. Likewise, plaintiff's references to the location of the fall as a roadway, public drive, and public driveway in the complaint, her deposition, and her affidavit are also not dispositive of the issue. The applicability of governmental immunity does not depend solely on a party's choice of a label corresponding to an exception to immunity. See *Ward v Frank's Nursery & Crafts*, 186 Mich App 120; 463 NW2d 442 (1990); *Richardson v Warren Consolidated School District*, 197 Mich App 697, 704-705; 496 NW2d 380 (1992). In the context of a motion for summary disposition under MCR 2.116(C)(7), the contents of the complaint are accepted as true "unless specifically contradicted by the affidavits or other appropriate documentation submitted by the movant." *Patterson v Kleiman*, 447 Mich 429, 434; 526 NW2d 879 (1994). Thus, once controverted by evidence submitted by defendant, plaintiff's choice of the label "public drive" in the complaint is not adequate to survive a motion for summary disposition.

The evidence presented in this case indicates that the area where plaintiff fell was a parking lot, not a highway. In support of its motion for summary disposition, defendant attached diagrams drawn by plaintiff and her daughter at their depositions showing the location of the fall. The diagrams are consistent with each other and show that the fall occurred in an aisle between rows of parking spaces, about three parking spaces from the end of the rows nearest the library. The rows of parking spaces are separated from the door of the library by a roadway<sup>1</sup>, running next to the library and the city hall. The aisle and the rows of parking places are perpendicular to this roadway.

Defendant also attached an affidavit of the community services director for the City of St. Clair Shores, in which he refers to the roadway adjacent to the library. According to the affidavit, Lac Park Lane was designated a roadway by the City of St. Clair Shores in 1992, a year after plaintiff's fall, when the library lot was repaved. "This lane is an area directly behind the library. It is not close to the area Plaintiff described in her police report. Plaintiff fell

approximately ten [parking] spaces from Lac Park Lane, which is 90 feet from the east edge of Lac Park Lane.”

In response to defendant's motion for summary disposition, plaintiff asserted:

Ms. Gillick, from the time she filed her Complaint, asserted that she fell in the roadway adjacent to the parking lot of the St. Clair Shores Public Library. This roadway had street signs on both the corner of Jefferson and Eleven Mile roads, and is named Loc Lake Drive. Loc Lake Drive runs behind the library and the municipal building, and continues towards the lake and ending at a marina behind the library. There is parking along this roadway, that is not partitioned distinctly from the roadway. This is the area in which Ms. Gillick fell. As such, there is at the very least a material issue of fact as to whether or not Ms. Gillick fell in the roadway designated Loc Lake Drive.

Initially, we note that these assertions in plaintiff's brief are not supported by evidence.<sup>2</sup> In any event, from the diagrams drawn by plaintiff and her daughter, it is apparent that there is no dispute that plaintiff fell in the area of parking, that the parking area was "along this roadway", which plaintiff calls Loc Lake Drive and the community service director called Lac Park Lane. Plaintiff does not indicate that the aisle between the rows was itself a highway and the evidence submitted would not support such a contention.

Thus, in light of the pleadings, depositions, and other documentary evidence submitted by the parties, we conclude that there is no genuine issue of material fact that the place where plaintiff fell, an aisle between the two rows of parked cars, was a parking lot. Because parking lots are not within the highway exception to governmental immunity, *Bunch, supra*, defendant was entitled to summary disposition pursuant to MCR 2.116(C)(7). *Gibson v Grand Rapids*, 162 Mich App 100, 103; 412 NW2d 658 (1992), citing MCR 2.116(I)(1). The trial court's order denying defendant's motion for summary disposition is reversed.

In light of our conclusion with respect to governmental immunity, we need not address defendant's arguments concerning the statute of limitations.

Reversed.

/s/ Kathleen Jansen  
/s/ Maureen Pulte Reilly  
/s/ Michael E. Kobza

<sup>1</sup> We use the term "roadway" in a general sense to describe the paved area for vehicular travel that runs alongside the library and the city hall. Inasmuch as plaintiff fell within the parking area adjacent to that "roadway", as discussed in the opinion, we make no determination as to whether the "roadway" would be within the highway exception to governmental immunity.

<sup>2</sup> As support for these assertions, plaintiff referred to the complaint, plaintiff's deposition transcript and two pictures. However, these items do not support the assertions. The complaint merely alleged that plaintiff fell as she was walking along a "public drive", and does not specify Loc Lake Drive. At plaintiff's deposition, when asked if the roadway where she was walking had a street name, plaintiff

responded “no.” The pictures attached to plaintiff’s brief in response to the motion for summary disposition purporting to show Loc Lake Drive are also unhelpful inasmuch as plaintiff did not state that she fell while on that roadway.