

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

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BARBARA DUNN,

Plaintiff-Appellant,

v

CITY OF PONTIAC,

Defendant-Appellee.

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UNPUBLISHED

September 20, 1996

No. 174021

LC No. 93452839 NO

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from a grant of summary disposition for defendant pursuant to MCR 2.116(C)(7) and (C)(10) in this slip and fall action.

Plaintiff, Barbara Dunn, was employed as a bus driver for the Pontiac School District. On April 15, 1991, she parked her bus on Hillside drive in front of Lincoln Junior High School. Upon emerging from the bus, she stepped onto the grass berm between the street and the sidewalk and tripped over a small metal stake protruding from the ground, injuring her wrist.

Plaintiff filed suit against defendant, City of Pontiac, alleging negligence and nuisance. Defendant defended asserting that it was entitled to governmental immunity, because it lacked jurisdiction over the situs of the injury. The trial judge agreed and granted summary disposition to defendant.

Plaintiff argues that the trial judge erred in finding that defendant was entitled to governmental immunity because it did not have jurisdiction over the road and berm. We disagree.

The defective highway exception to governmental immunity provides in pertinent part:

Each governmental agency having jurisdiction over any highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. Any person sustaining bodily injury or damage to his property by reason of

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

failure of any governmental agency to keep any highway under its jurisdiction in reasonable repair, and in condition reasonably safe and fit for travel, may recover the damages suffered by him from such governmental agency. [MCL 691.1402; MSA 3.996(102).]

Therefore, the governmental immunity act limits liability to the governmental agency having jurisdiction over the highway at the time of the injury. *Markillie v Livingston Bd of Co Road Comm'rs*, 210 Mich App 16, 19; 532 NW2d 878 (1995); *Fuller v Dep't of Transportation*, 168 Mich App 682, 684; 425 NW2d 693 (1988). This Court has determined that the word "jurisdiction" is synonymous with "control." *Markillie, supra*, pp 21-22.

No question of material fact exists regarding whether defendant had jurisdiction over the berm. In support of its motion for summary disposition, defendant submitted a copy of a formal resolution which stated that in 1967, defendant vacated and relinquished control of the area in question. The area was vacated pursuant to a petition from the Pontiac Board of Education. Upon vacation of the street, title reverted to the abutting owner, in this case the Pontiac Board of Education. *Valoppi v Detroit Engineering & Machine Company*, 339 Mich 674, 677; 64 NW2d 884 (1954).

In response, plaintiff submitted evidence establishing that defendant maintained the area. However, the issue is not who maintained the area, but who controlled it. *Fuller, supra*. Plaintiff's evidence does not create a genuine issue of material fact.

Plaintiff asserts that, even though the 1967 resolution states that defendant vacated the land, it was not effective. She claims that, in order to properly vacate a highway, the governmental entity must close it and discontinue the public's use of it. We disagree.

Once a city vacates a street, it is for the adjoining land owner, who acquires control over it, to determine an appropriate use. Plaintiff cites *Tomaszewski v Palmer Bee Co.*<sup>1</sup> for the proposition that vacating means closing. However, there, it was the adjoining landowner who decided to close off the street to the public, not the city that vacated it. Therefore, we refuse to hold that the City of Pontiac is required to close off the street to public use upon vacation.

Plaintiff argues that defendant cannot be found to have relinquished jurisdiction over the road to the school district, where this Court has stated that school districts enjoy no independent jurisdiction over a public highway. *Richardson v Warren Consolidated School District*, 197 Mich App 697; 496 NW2d 380 (1992). However, in *Richardson*, the Court did not address the issue whether a school district can assume jurisdiction over a road vacated by a city. Here, the Board of Education petitioned the City to vacate jurisdiction over the area in question. Under that fact situation, we find that the school district can assume jurisdiction.

Plaintiff argues that, regardless of the road's legal status in 1967, its subsequent public use and defendant's maintenance of the area, prescriptively rendered it a public highway. However, the fact that the area is sometimes used for public travel does not convert it to a public highway. See *Richardson, supra*, p 705.

Finally, we reject plaintiff's argument that, even if defendant did not have jurisdiction at the time of the injury, it is nonetheless liable, because it had jurisdiction when it negligently left the stake remnant. Plaintiff has failed to substantiate her claim with any evidence other than a statement by Sheila Merritt that the stake appeared black, old and rusty. This statement alone was insufficient to establish that defendant left the stake remnant at a time that it had jurisdiction. A party opposing a motion for summary disposition must, by documentary evidence, set forth specific facts showing that a genuine issue of material fact exists. Mere propositions are insufficient. *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Marilyn Kelly

/s/ J. Richardson Johnson

<sup>1</sup> 223 Mich 565; 194 NW 571 (1923).