

STATE OF MICHIGAN
COURT OF APPEALS

JOSE B. MANGUNE and ELSIE N. MANGUNE,

Plaintiffs-Appellants,

v

CHARLEVOIX COUNTY ROAD COMMISSION,
EMMET COUNTY ROAD COMMISSION, BAY
TOWNSHIP and RESORT TOWNSHIP,

Defendants-Appellees.

UNPUBLISHED

March 11, 1997

No. 192954

Charlevoix Circuit Court

LC No. 95-004518-CZ

Before: Fitzgerald, P.J., and Taylor and Markman, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting summary disposition in favor of defendant Bay Township pursuant to MCR 2.116(C)(8) and (10). Plaintiffs also challenge on appeal orders granting summary disposition in favor of defendants Resort Township, Charlevoix County Road Commission, and Emmet County Road Commission pursuant to MCR 2.116(C)(7), (8) and (10). We affirm.

Plaintiffs own waterfront property on Walloon Lake, a navigable inland lake. The northern boundary line of plaintiffs' property runs along the center of Stolt Road, which terminates at the end of Walloon Lake. Stolt Road is located in both Bay Township and Resort Township. Pursuant to MCL 224.21; MSA 9.121, defendant road commissions have the duty to maintain county roads, which includes Stolt Road, in reasonable repair. Plaintiffs alleged that defendants intentionally created and maintained Stolt Road in a manner reasonably calculated to permit and encourage the public to use and abuse plaintiffs' property by doing such things as sunbathing on or near plaintiffs' property, disposing of trash on plaintiffs' property, and throwing eggs at plaintiffs' house.

Plaintiffs first argue that the trial court erred in granting summary disposition in favor of defendants regarding their claim for non-pecuniary equitable relief based on a nuisance theory of liability. We disagree. Defendant townships do not have any authority to maintain or control Stolt Road because they do not have jurisdiction over highways. *Listanski v Canton Twp*, 452 Mich 678, 689-691; 551 NW2d 98 (1996). With regard to defendant road commissions, plaintiffs argued below that the manner

in which the road commissions maintained Stolt Road created a nuisance. Because this allegation of nuisance does not involve a physical intrusion onto plaintiffs' property, the road commissions are immune from liability under governmental immunity. *Hadfield v Oakland Co Drain Comm*, 430 Mich 139, 169; 422 NW2d 205 (1988). Further, any trespass-nuisance committed by third parties does not constitute governmental action by defendants for which governmental immunity will be waived.

Plaintiffs next argue that they are entitled to monetary damages for defendants' trespass-nuisance. We disagree. Plaintiffs did not properly allege a causal link between the space for the turn-around at the end of Stolt Road and members of the public vandalizing and trespassing on plaintiffs' property. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994).

Finally, plaintiffs argue that since defendants are using Stolt Road for purposes other than highway purposes, their use constitutes a taking for which compensation is due. We disagree. Again, defendant townships are not liable because they do not have jurisdiction over Stolt Road. A claim of taking or inverse condemnation is premised upon governmental regulation. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 190; 521 NW2d 499 (1994). We find no authority for the proposition that actions by third parties can constitute governmental action. Thus, plaintiffs have not properly alleged a claim for inverse condemnation.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Clifford W. Taylor

/s/ Stephen J. Markman