

STATE OF MICHIGAN
COURT OF APPEALS

FRANCES C. ASHTON and JAMES
ASHTON,

UNPUBLISHED
April 4, 1997

Plaintiff-Appellants,

v

No. 182876
Oakland Circuit Court
LC No. 94-477615

CITY OF HAZEL PARK,

Defendant-Appellees.

Before: Holbrook, Jr., P.J, and White and A. T. Davis*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from an order granting summary disposition to defendant pursuant to MCR 2.116(C)(7) and (C)(10) on governmental immunity grounds. We reverse.

In June 1992, Frances Ashton tripped and fell sustaining injuries when her foot struck a raised portion of defendant's sidewalk. It is undisputed that the depression in the sidewalk was less than two inches in depth. Plaintiff thereafter brought suit under the highway exception to governmental immunity. MCL 691.1402; MSA 3.996(102). The trial court held that the exception was inapplicable based upon the "two-inch rule," enunciated in *Wadkins v Albion*, 201 Mich 130, 131 (1918), that a sidewalk depression that does not exceed two inches in depth cannot give rise to municipal liability.

While the instant case was pending on appeal, a panel of this Court decided *Glancy v City of Roseville*, 216 Mich App 390-392; 549 NW2d 73 (1996). *Glancy* held that the Legislature did not intend in MCL 691.1407(1); MSA 3.996(1) to reaffirm the "two-inch rule" respecting a municipality's liability for its sidewalks, since the 1986 amendment was intended to affect only the state's liability. *Glancy* is controlling. Administrative Order No. 1996-4. Pursuant to *Glancy*, the trial court's decision to grant summary disposition to defendant was error.

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

Reversed and remanded.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Alton T. Davis