

STATE OF MICHIGAN
COURT OF APPEALS

JAMES D. PRESLER,

UNPUBLISHED
May 27, 1997

Plaintiff/Appellant/
Cross-Appellee,

v

No. 189878
Newaygo Circuit Court
LC No. 94-014884-NI

THE CITY OF WHITE CLOUD, TOWNSHIP OF
EVERETT and THE COUNTY OF NEWAYGO,

Defendants-Appellees,

and

THE BOARD OF COUNTY ROAD
COMMISSIONERS OF THE COUNTY OF
NEWAYGO,¹

Defendant/Appellee/
Cross-Appellant.

Before: Hoekstra, P.J., and Markey and J.C. Kingsley*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to White Cloud.² Plaintiff also appeals an earlier order of the trial court granting summary disposition in favor of the Road Commission on the basis of plaintiff's failure to comply with the statutory notice period. The Road Commission cross-appeals as of right from the trial court's denial of its initial motion for summary disposition involving the statute of limitations. We affirm the granting of summary disposition in favor of White Cloud and the Road Commission for the reasons stated in this opinion.

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

Plaintiff argues that the trial court erred in granting White Cloud's motions to dismiss under MCR 2.116(C)(7) and MCR 2.116(C)(10) because White Cloud's repair and maintenance of the accident site gave it jurisdiction over the area of roadway at issue and subjected White Cloud to liability under the highway exception to governmental immunity. MCL 691.1402; MSA 3.996(102). We disagree. This Court has held that "jurisdiction" as used in the highway exception to governmental immunity is synonymous with "control," so as to limit liability for defective highways to the entity with the authority to construct, repair and maintain them. *Markillie v Bd of Co Rd Commissioners of Co of Livingston*, 210 Mich App 16, 21-22; 532 NW2d 878 (1995). This Court has also refused to extend jurisdiction over county roads to municipalities simply because the municipalities assume maintenance over them, *Kuhn v Associated Truck Lines, Inc.*, 173 Mich App 295, 300; 433 NW2d 424 (1988), and has stated that there can be no concurrent jurisdiction over highways. *Berry v City of Belleville*, 178 Mich App 541, 547; 444 NW2d 222 (1989).

Here, we conclude that the trial court did not err in granting White Cloud's motion for summary disposition because White Cloud established as a matter of law that it did not have jurisdiction over the roadway at issue. Plaintiff's assertions that White Cloud repaired and maintained the road and fixtures around the accident scene are not enough to confer jurisdiction over the accident scene on White Cloud. *Markillie, supra* at 21-22; *Kuhn, supra* at 300. Because it did not have jurisdiction over the roadway at issue, White Cloud is not liable for the alleged defects of which plaintiff complains and is entitled to claim governmental immunity. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993); *Berry, supra* at 547.

On cross-appeal, the Road Commission claims that the trial court erred in not granting its initial motion for summary disposition because plaintiff did not file his amended complaint or serve notice upon the Road Commission until the limitations period had expired. We agree. The period of limitations for claims against a governmental agency arising out of the negligent maintenance of a highway is two years under MCL 691.1411; MSA 3.996(111). *West v Livingston Co Rd Commission*, 131 Mich App 63, 65; 345 NW2d 608 (1983).

Where a defendant is brought into an action for the first time through the filing of an amended or supplemental complaint, the filing of the amendment constitutes the commencement of the action against that defendant. The statutory period continues to run until the time of the filing of the amendment. If at that time the action is barred, a party subsequently brought in may claim that he is not liable because the statute of limitations has expired. *Forest v Parmalee (On Reh)*, 60 Mich App 401, 406; 231 NW2d 378 (1975), *aff'd on other grds*, 402 Mich 348; 262 NW2d 653 (1978). An exception to this rule is that an additional defendant may be brought in after the statute of limitations has expired where the amendment corrects a defect in the original proceeding, *Id.*, such as when the right party is served under a wrong name or in an incorrect capacity. *Ray v Taft*, 125 Mich App 314, 320; 336 NW2d 469 (1983). In those situations, courts have deemed the applicable statute of limitations tolled because the true defendant had notice of the litigation and was not prejudiced by the amendment. *Id.*

Here, it is undisputed that plaintiff did not serve the chairperson or the clerk of the Road Commission with his *original* complaint until after the limitations period had expired, and that the

amended complaint was not even *filed* until after the limitations period had expired. Plaintiff attempts to avoid the statute of limitations in this case by arguing that the Road Commission was aware of the suit, should have realized that they were the proper party to the suit, and that substituting the Road Commission for the County of Newaygo only corrected the name of a proper party. Contrary to plaintiff's position, plaintiff's filing of an amended complaint naming the Road Commission in place of the County of Newaygo did not merely correct a misnomer. *Ray, supra* at 320. Counties and county road commissions are recognized as separate "political subdivisions" and "governmental agencies" by MCL 691.1401(b) and (d); MSA 3.996(101)(b) and (d). County road commissions are also recognized as bodies corporate under MCL 224.9(1); MSA 9.109(1), and MCL 224.21; MSA 9.122 provides that actions for failure to maintain safe highways "shall be brought against the board of county road commissioners . . . and service shall be made upon the clerk and upon the chairperson of the board." Accordingly, we believe that under these facts, no exception to the rule regarding the amendment of complaints to add additional parties applied and that the Road Commission was entitled to summary disposition because the statute of limitations had expired.

Because we agree with the Road Commission that they were entitled to summary disposition on the basis of the statute of limitations, we need not address plaintiff's issue that summary disposition was improperly granted in the Road Commission's favor on the basis of plaintiff's failure to comply with the statutory notice provisions contained in MCL 224.21; MSA 9.121 and MCL 691.1404; MSA 3.996(104). Even assuming *arguendo* that we agreed with plaintiff that summary disposition on this basis was improperly granted, summary disposition in the Road Commission's favor would still have been proper on the basis of the statute of limitations, and plaintiff would be entitled to no relief because this Court will not reverse the trial court where the right result is reached for the wrong reason. *Welch v District Court*, 215 Mich App 253, 256; 545 NW2d 15 (1996).

We affirm the granting of summary disposition in favor of White Cloud and the Road Commission for the reasons stated in this opinion. Both defendants having prevailed, they may tax costs pursuant to MCR 7.219.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ James C. Kingsley

¹ For ease of reference, defendant City of White Cloud will be referred to as "White Cloud" and the Board of County Road Commissioners for the County of Newaygo will be referred to as "the Road Commission."

² This was the final order in plaintiff's case because White Cloud was then the only defendant remaining in the suit. The County of Newaygo was dismissed on its motion for summary disposition on September 28, 1994, Township of Everett by stipulation on May 15, 1995, and the Road Commission on its motion for summary disposition on June 12, 1995.