

STATE OF MICHIGAN
COURT OF APPEALS

FAYE J. COLLING,

Plaintiff-Appellee,

v

DETROIT PUBLIC LIBRARY,

Defendant-Appellant,

and

CITY OF DETROIT,

Defendant.

UNPUBLISHED

July 18, 1997

No. 188985

Wayne Circuit Court

LC No. 95-516786-NO

Before: White, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Defendant Detroit Public Library appeals by leave granted from the trial court's order denying its motion for summary disposition. We reverse.

Plaintiff alleged that she fell on a defective sidewalk approximately ten to fifteen feet from the door to defendant library. Defendant library moved for summary disposition, arguing that governmental immunity applied to bar plaintiff's complaint and that no exception to the doctrine of governmental immunity was available on the facts of this case.

In the trial court, plaintiff argued that two exceptions applied: First, the public highway exception, MCL 691.1402; MSA 3.996(102); and second, the public building exception (assuming the sidewalk was part of the building itself), MCL 691.1406; MSA 3.996(106). We do not believe either of these exceptions applies to the facts of this case. Hence, it was error for the trial court to deny defendant library's motion for summary disposition.

For the public highway exception to apply, an agency must have jurisdiction over some form of highway. If an agency does not have jurisdiction over highways, then this exception does not apply to

impose liability for driveways or sidewalks. *Richardson v Warren Consolidated School Dist*, 197 Mich App 697, 701-705; 496 NW2d 380 (1992). In the case at bar, plaintiff did not produce any evidence or allege any facts that suggest that defendant library has jurisdiction over highways. Accordingly, the highway exception does not apply in this matter to avoid governmental immunity. Summary disposition for defendant library should therefore have been granted by the trial court. *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994); *Brown v Genesee Co Bd of Comm'rs*, ___ Mich App ___; ___ NW2d ___ (Docket No. 179788, issued 3/21/97), slip op p 1-2.

Next, the public building exception requires that governments maintain safe public buildings, but the exception is narrowly drawn. *Steele v Dep't of Corrections*, 215 Mich App 710, 713; 546 NW2d 725 (1996). For the exception to apply, the plaintiff is required to show, among other things, that the public building itself contains a defective or dangerous condition. *Jackson v Detroit*, 449 Mich 420, 428; 537 NW2d 151 (1995). The term "building" in its plain meaning is generally limited to a physical structure with a roof. *Ali v Detroit*, 218 Mich App 581, 584-585; 554 NW2d 384 (1996).

On the facts of this case, viewed in a light most favorable to plaintiff, the claimed defect in the sidewalk was ten to fifteen feet away from the entrance to defendant library. Plaintiff did not allege that she fell at the entrance to the building, but on an adjacent sidewalk. On these facts, we do not believe that the public building exception applies because the sidewalk was not a part of the building itself. *Hall v Detroit Bd of Ed*, 186 Mich App 469; 465 NW2d 12 (1990); *Wing v Detroit*, 178 Mich App 628, 629-631; 444 NW2d 539 (1989); see also *Henkey v Grand Rapids*, 440 Mich 867; 485 NW2d 487 (1992); cf *Maurer v Oakland Co Parks and Recreation Dep't (On Remand)*, 201 Mich App 223, 228-230; 506 NW2d 261 (1993), reversed on another ground 449 Mich 606, 621; 537 NW2d 185 (1995). Defendant library was entitled to summary disposition regarding the public building exception. *Patterson, supra*; *Brown, supra*.

Plaintiff argues that this Court should follow *Tilford v Wayne Co General Hosp*, 403 Mich 293; 269 NW2d 153 (1978). We disagree in light of the more recent changes in the law that have redefined the boundaries of governmental immunity and the public building exception. *Wade v Dep't of Corrections*, 439 Mich 158 167; 483 NW2d 26 (1992); *Brown, supra* at 3; *Wing, supra*.

Reversed and remanded for entry of an order granting summary disposition to defendant library. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Richard A. Bandstra
/s/ Michael R. Smolenski