

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN M. BARLOW,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

November 14, 1997

No. 198894

Court of Claims

LC No. 96-016391-CM

Before: Griffin, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s order granting summary disposition for defendant pursuant to MCR 2.116(C)(7) on the basis that defendant was entitled to governmental immunity. We affirm.

While incarcerated in the Mid-Michigan Correctional Facility, plaintiff was injured when the desk he was using to alight from an upper bunk bed¹ gave way. Plaintiff fell to the ground and suffered a contusion on his leg. Prior to the fall, plaintiff complained to correctional facility personnel that the desk was broken. Although plaintiff’s complaint was logged, defendant took no action to repair or replace the broken desk. Plaintiff’s complaint alleges that defendant was negligent in failing to repair the desk prior to plaintiff’s fall.

Defendant moved for summary disposition arguing that plaintiff’s claim was barred by governmental immunity. The trial court granted defendant’s motion reasoning that, because plaintiff was not injured as a result of a defect in the building itself, the public building exception to governmental immunity did not apply. Plaintiff appeals from that determination.

When reviewing a grant of summary disposition based on a finding that the claim is barred by governmental immunity, this Court considers all documentary evidence submitted by the parties. *Summers v Detroit*, 206 Mich App 46, 48; 520 NW2d 356 (1994). All well-pleaded allegations are accepted as true and construed most favorably to the nonmoving party. To survive a motion for summary disposition, the plaintiff must allege facts that justify the application of an exception to governmental immunity. *Id.*

In general, governmental agencies engaged in the exercise or discharge of a governmental function enjoy broad immunity from tort liability. MCL 691.1407; MSA 3.996(107); *Gibson v Grand Rapids*, 162 Mich App 100, 102; 412 NW2d 658 (1987). The operation and maintenance of a jail is a governmental function. *Spruytte v Dep't of Corrections*, 82 Mich App 145, 148; 266 NW2d 482 (1978). Consequently, defendant is immune from liability unless plaintiff's claim falls within one of the enumerated exceptions to governmental immunity. *Summers, supra* at 48.

The only relevant exception to be considered under these circumstances is the public building exception, MCL 691.1406; MSA 3.996(106)²:

Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition.

Before the public building exception will apply, the plaintiff must prove that (1) a governmental agency is involved, (2) the public building in question is open for use by members of the public, (3) a dangerous or defective condition of the building itself exists, (4) the governmental agency had actual or constructive knowledge of the defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable period. *Brown v Genesee Co Bd of Comm'rs*, 222 Mich App 363, 365-366; 564 NW2d 125 (1997).

Considering the foregoing elements, we conclude that the trial court properly granted defendant's motion. The living quarters of the Mid-Michigan Correctional Facility do not constitute, for purposes of the exception, a public building. Moreover, plaintiff has failed to identify a dangerous or defective condition of the building itself.

In *Steele v Dep't of Corrections*, 215 Mich App 710; 546 NW2d 725 (1996), this Court considered the applicability of the public building exception to the claims of an inmate who was injured while working on the renovation of a state building into a correctional facility. Finding that the public building exception did not apply, this Court held:

The public building exception is applicable to buildings with limited access, such as schools and *prisons*. See e.g., *Bush [v Oscoda Area Schools]*, 405 Mich 716; 275 NW2d 268 (1979)], *supra*, *Green, [v Dep't of Corrections]*, 386 Mich 459; 192 NW2d 491 (1971)], *supra*. However, the exception does not apply to buildings that are specifically closed to members of the public. *Dudek, [v Michigan]*, 152 Mich App 81; 393 NW2d 572 (1986)], *supra*. Because the building in which plaintiff was injured

was not open to the public during renovations, the trial court properly granted the department's motion for summary disposition. [*Id.* at 715. Emphasis added.]

Following *Steele*, the Court in *Brown, supra*, recently addressed the applicability of the public building exception to a case wherein a prisoner was injured when, after showering, he slipped and fell on a wet floor. In analyzing the exception, this Court stated:

The purpose of the building exception to governmental immunity is to protect the general public from injury by imposing a duty on the government to maintain safe public buildings but not necessarily safety in public buildings. . . . Accordingly, with respect to this issue, the focus of the trial court's and this Court's inquiry is on the "accessibility [of the accident site] to members of the general public, *rather than on the extent to which the building might benefit the community.* [*Brown, supra* at 366. Emphasis in original.]

Concluding that the public building exception did not apply, this Court reasoned:

Applying the same reasoning to the case at bar, we believe that the shower area of the jail was open only for certain individuals, i.e., inmates housed in the vicinity of the shower who were assigned to bathe there and any supervisory or cleaning crews scheduled to oversee or maintain the area. The shower area was not designed to be used by or to be accessible to members of the general public; this was not a public restroom. *Putman [v Wayne Co Community College (After Remand)]*, 189 Mich App 557; 473 NW2d 711 (1991)], *Taylor [v Detroit]*, 182 Mich App 583; 452 NW2d 826 (1989)], and *Griffin [v Detroit]*, 178 Mich App 302; 443 NW2d 406 (1989)], clearly instruct us that the situs of the accident is key, and areas where the public cannot visit without proper authorization do not fall within the public building exception. [*Brown, supra* at 370.]

It is manifest that the public building exception does not apply to the facts in this case. Plaintiff was injured in the living quarters of the correctional facility. These quarters are not open to the public. Only authorized individuals are permitted access to this area. Because the public cannot visit the area in which plaintiff was injured without proper authorization, plaintiff was not injured in a public building for purposes of the exception. *Steele, supra*; *Brown, supra*.

In addition, plaintiff has not alleged a dangerous or defective condition of the building itself. In *Velmer v Baraga Area Schools*, 430 Mich 385, 394; 424 NW2d 770 (1988), the Supreme Court held that "in order for the public building exception to apply, the injury must result from a defect or dangerous condition of the building itself." The Court also recognized that items which are found to be fixtures are considered to be part of the realty to which they are connected. *Id.* Thus, the public building exception has been interpreted to include items permanently affixed to a public building. *Gibson v Grand Rapids*, 162 Mich App 100, 104; 412 NW2d 658 (1987). According to the affidavit of defendant's employee, David F. Swartz, the desk was not affixed to the floor or wall and

was capable of being moved. The desk at issue can not reasonably be deemed to be a fixture so as to invoke the public building exception. See, *Velmer, supra*, at 394; *Gibson, supra* at 104.

We have consider the other issues raised by plaintiff and find them to be without merit.

Affirmed.

/s/ Richard Allen Griffin

/s/ David H. Sawyer

/s/ Peter D. O'Connell

¹ Plaintiff alleges that using the desk was the only means by which he could gain access to the upper bunk bed.

² The Governmental Immunity Act sets forth five exceptions to immunity. A governmental agency can be held liable for damages caused by an unsafe highway, MCL 691.1402; MSA 3.996(102), by the negligent operation of a motor vehicle, MCL 691.1405; MSA 3.996(105), by operation of a hospital or county medical facility, MCL 691.1407(4); MSA 3.996(107)(4), by the performance of a proprietary function, MCL 691.1413; MSA 3.996(113), and by a dangerous or defective public building, MCL 691.1406; MSA 3.996(106).