STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH J. BUNGARDAS, JR., and
SHARON M. BUNGARDAS,

Plaintiffs-Appellants,

v

WAYNE COUNTY and
CITY OF DEARBORN,

Defendants-Appellees.

UNPUBLISHED
December 30, 1997

No. 194418
Wayne Circuit Court
LC No. 95-509766-NO

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Plaintiffs Joseph J. Bungardas, Jr., and Sharon M. Bungardas appeal as of right orders granting summary disposition in favor of defendants Wayne County and City of Dearborn. We reverse the grant of summary disposition in favor of Wayne County, and remand. We affirm the grant of summary disposition in favor of defendant Dearborn.

In November, 1993, plaintiff Sharon Bungardas was driving her vehicle eastbound on Alber Street in defendant Dearborn. Plaintiff Joseph Bungardas was a passenger in this vehicle. Upon reaching the "T" intersection of Alber Street and Miller Road, plaintiff Sharon Bungardas may have stopped for the stop sign posted on Alber Street and looked for traffic on Miller Road, including southbound traffic. When plaintiff Sharon Bungardas did proceed into the intersection, intending to turn left and head north on Miller Road, a collision occurred between her vehicle and a vehicle traveling southbound on Miller Road. Neither plaintiff Sharon Bungardas nor the other driver allegedly saw each other until it was too late to avoid the collision.

Plaintiffs filed suit against defendants, alleging claims sounding in negligence and public nuisance. With respect to the negligence claim, plaintiffs alleged that defendants had a duty to maintain Alber Street, Miller Road, and the intersection of these two highways in a condition that was safe and convenient for public travel. Plaintiffs alleged that defendants breached this duty, in part, (1) by failing to

warn of the hazardous conditions of these roads and the intersection; (2) by allowing the installation of traffic controls and signs, including signs prohibiting parking on Miller Road, in such a manner as to give rise to a condition creating an unreasonable risk of harm; (3) by failing to adequately design and install traffic signs and controls, especially those prohibiting or restricting parking on Miller Road, so as to permit reasonably safe and convenient travel, and (4) by failing to provide adequate sight clearance for the northwest corner of Alber Street and Miller Road.

During the ensuing discovery proceedings, defendant Wayne County admitted that between the years 1985 and 1995 (1) it had jurisdiction over Miller Road and the intersection of Miller Road and Alber Street; (2) that its jurisdiction over the intersection extended west onto Alber Street at least six feet and included the stop sign located on Alber Street, and; (3) that jurisdiction of Miller Road was never transferred from defendant Wayne County to defendant Dearborn. Defendant Dearborn admitted that it had jurisdiction over Alber Street.

Other information gleaned during discovery indicated that in 1989 defendant Dearborn widened and curbed Miller Road pursuant to permits issued by defendant Wayne County. In March, 1990, and apparently pursuant to a recommendation by defendant Wayne County, defendant Dearborn installed a "No Parking Beyond Sign" sign on the west side of Miller Road 150 feet north of the intersection of Miller Road and Alber Street. In August, 1991, and allegedly without obtaining a permit from or otherwise notifying defendant Wayne County, defendant Dearborn removed this sign and installed a "No Parking Here To Corner" sign on the west side of Miller Road approximately seventy-nine feet north of the intersection. At the time of the collision, a van was legally parked just to the north of this sign in the western most lane of southbound Miller Road. Plaintiffs allege that the van caused a vision obstruction for plaintiff Sharon Bungardas and the driver of the other vehicle as they approached the intersection.

Defendant Wayne County moved for summary disposition of plaintiffs' claims pursuant to MCR 2.116(C)(7), (8) and (10). With respect to plaintiffs' negligence claim, defendant Wayne County contended that it was not subject to liability under the highway exception to governmental immunity for defects in traffic signs or temporary conditions of the roadway, i.e., parked vehicles along Miller Road. The trial court granted summary disposition of plaintiffs' negligence claim. [1] The trial court determined that under the current state of the law the highway exception to governmental immunity did not apply to plaintiffs' case. As part of this ruling, the trial court found that the "No Parking Here To Corner" sign on Miller Road was adequately positioned because it did not violate the prohibition contained in MCL 257.674; MSA 9.2374 against parking a vehicle with fifteen feet of an intersection. The court also noted that the proximate cause of the collision was the failure to yield, not the construction of the intersection.

Defendant Dearborn moved for summary disposition of plaintiffs' negligence claim pursuant to MCR 2.116(C)(7) and (8). Defendant Dearborn contended that it could not be liable under the highway exception to governmental immunity because it did not have jurisdiction over Miller Road. During oral argument, plaintiffs contended that defendant Dearborn had jurisdiction over Miller Road because defendant Dearborn had exercised control over parking along Miller Road. Plaintiffs

abandoned their public nuisance claim but contended that their complaint set forth a valid claim of trespass-nuisance as an exception to governmental immunity. The trial court granted summary disposition in favor of defendant Dearborn.

We initially address plaintiffs' arguments concerning defendant Wayne County. Plaintiffs contend that the trial court erred in granting summary disposition in favor of defendant Wayne County because the highway exception does apply to this case.

As a general rule, governmental agencies are immune from tort liability when engaged in the exercise or discharge of a governmental function. *McKeen v Tisch (On Remand)*, 223 Mich App 721, 723; 567 NW2d 487 (1997) (citing MCL 691.1407[1]; MSA 3.996[107][1]). However, certain statutory exceptions to the general rule of governmental immunity exist. One of these exceptions is the highway exception, which, at the time of the collision involved in this case, provided in relevant part as follows:

> Each governmental agency having jurisdiction over any highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. Any person sustaining bodily injury or damage to his or her property by reason of failure of any governmental agency to keep any highway under its jurisdiction in reasonable repair, and in condition reasonably safe and fit for travel, may recover the damages suffered by him or her from the governmental agency. . . . The duty of the state and the county road commissions to repair and maintain highways, and the liability therefor, shall extend only to the improved portion of the highway designed for vehicular travel and shall not include sidewalks, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. [MCL 691.1402(1); MSA 3.996(102)(1), amended by 1996 PA 150.[2]]

The duty of maintenance imposed by the first sentence of the highway exception includes the duty to erect adequate warning signs or traffic control devices at known points of hazard or special danger. *Pick v Szymczak*, 451 Mich 607, 619, 621; 548 NW2d 603 (1996). A point of hazard or special danger is defined

> as any condition that directly affects vehicular travel on the improved portion of the roadway so that such travel is not reasonably safe. To be a point of hazard for purposes of the highway exception, the condition must be one that uniquely affects vehicular travel on the improved portion of the roadway, as opposed to a condition that generally affects the roadway and its surrounding environment. We reemphasize, however, that such conditions need not be physically part of the roadbed itself. [*Id*. at 623.]

In *McKeen, supra* at 723, the plaintiff brought a negligence claim against the defendant county road commission after the plaintiff's decedent was killed by a falling tree limb while traveling on a highway. Applying *Pick*, this Court found that the plaintiff had sufficiently alleged a point of hazard to

justify application of the highway exception from the facts that the limb had been severed from its tree and hung over the highway for over a month before the accident and that it was apparent that the limb would eventually fall to the ground. *Id*. at 724, 726.

In *Paddock v Tuscola & S B R Co, Inc*, ___ Mich App ___; ___ NW2d ___ (Docket No. 192584, issued 9/26/97), at slip op 1, the plaintiff brought a negligence claim against the defendant county road commission after the plaintiff's decedent was killed when his vehicle was struck by a train at a railroad crossing. The plaintiff contended that the road commission had a duty to establish a clear vision area at the railroad crossing or to clear vegetation obstructing motorists' view of the crossing. *Id*. at slip op p 4. This Court disagreed:

> The *Pick* decision was limited to the legal question whether the highway exception to governmental immunity encompasses a duty to warn of hazards to travel. . . . It specifically did not address the duty to trim or remove vegetation. . . . Rather, the Court stated that "we expressly hold that a duty to provide adequate warning signs or traffic control devices at known points of hazard arises under the highway exception" to governmental immunity.
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> In this case, we are satisfied that the *vegetation* at the railroad crossing was not a "point of hazard" as that term was defined in *Pick*, but rather was "a condition that generally affects the roadway and its surrounding environment." . . . Instead, the point of hazard involved in this case—similar to the point of hazard in *Pick*—was the *intersection* of 14 Road [the highway] and the railroad track. Thus, the duty imposed under *Pick* was the duty to warn motorists, by installation of a sign or other warning device, of the existence of the railroad crossing. In this case, it was uncontroverted that a yield sign and a railroad crossbuck sign were installed at the crossing. Further, it was uncontroverted that, in addition to this visual warning, the railroad provided an audible warning; the train sounded its bell and whistle signaling its approach toward the intersection. Under these circumstances, the trial court did not err in concluding that the road commission was immune from tort liability under the highway exception. The vegetation was not a "point of hazard" as defined in *Pick* and signs warning of the relevant "point of hazard"—the crossing—were present. [*Id*. at slip op p 5.]

In this case, plaintiffs contend that improperly located no-parking signs on Miller Road created an unsafe and inadequate limited sight distance at the intersection of Alber Street and Miller Road. Construing these allegations in a light most favorable to plaintiff, we conclude that plaintiffs have alleged a point of hazard, i.e., a condition directly affecting vehicular travel on the improved portion of the roadway at the intersection so that such travel at that intersection was not reasonably safe. *Pick, supra*; *McKeen, supra*.

The trial court's conclusion that the no-parking sign on Miller Road was adequately positioned because it did not violate the prohibition contained in MCL 257.674; MSA 9.2374 against parking a vehicle with fifteen feet of an intersection is unpersuasive. This Court has recognized that the statutory

discretion vested in a highway authority with respect to the erection of traffic control devices does not relieve the authority of a statutorily-imposed duty to construct and maintain highways in a condition reasonably safe and convenient for public travel. *Mullins v Wayne Co*, 16 Mich App 365, 380-381; 168 NW2d 246 (1969). We believe the same principle applies with respect to a highway authority's erection of no-parking signs. See, e.g., MCL 257.675(4); MSA 9.2375.

Thus, because facts were alleged that would justify the application of the highway exception to governmental immunity, we conclude that the trial court erred in granting defendant Wayne County's motion for summary disposition on the ground of governmental immunity. *McKeen, supra* at 723,726.

With respect to the issue of proximate cause, we note that proximate cause is generally a factual issue for the jury to determine unless the facts bearing upon proximate cause are not in dispute and reasonable persons could not differ about the application of the legal concept of proximate cause to those facts. *Paddock, supra* at slip op pp 5-6; *Allen v Owens-Corning Fiberglass*, 225 Mich App 397, 403; ___ NW2d ___ (1997). There may be more than one proximate cause of an injury. *Allen, supra*. Because factual disputes exist in this case, we conclude that the question whether the negligence, if any, of either plaintiff Sharon Bungardas or defendant Wayne County was a proximate cause of the plaintiffs' injuries is for the jury. We conclude that the trial court erred in concluding otherwise. *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993).

In summary, we conclude that the trial court erred in granting summary disposition in favor of Wayne County. Accordingly, we reverse the grant of summary disposition in favor of Wayne County.

Next, we consider plaintiffs' arguments with respect to defendant Dearborn. Specifically, plaintiffs argue that defendant Dearborn had jurisdiction over Miller Road within the meaning of the highway exception to governmental immunity because defendant Dearborn installed, and therefore had control of, the no-parking signs along Miller Road. In so arguing, plaintiffs rely on *Markillie v Livingston Co Bd of Road Comm'rs*, 210 Mich App 16; 532 NW2d 878 (1995) and *Killeen v Dep't of Transportation*, 432 Mich 1; 438 NW2d 233 (1989).

It is true that in *Markillie*, this Court held that the term "jurisdiction," as used in the highway exception, is synonymous with "control." *Id*. at 22. However, in *Markillie*, this Court also stated that "[o]nly one governmental agency can have jurisdiction over a highway at any time; there is no concurrent jurisdiction." *Id*. In this case, the vehicular collision occurred in the intersection of Miller Road and Alber Street. The essence of plaintiffs' negligence claim is that the intersection was not reasonably safe for public travel. There is no dispute concerning which governmental agency has jurisdiction over the intersection because defendant Wayne County has admitted that between 1985 and 1995 it had jurisdiction over Miller Road and the intersection of Miller Road and Alber Street. Therefore, the duty imposed by the highway exception to maintain the intersection in a condition reasonably safe for public travel is with defendant Wayne County.

Plaintiffs' reliance on *Killeen* is equally unavailing. That case concerned a situation where jurisdiction over a highway was transferred by one governmental agency to another during road

construction and then transferred back again. In this case, defendant Wayne County has admitted that between 1985 and 1995 jurisdiction of Miller Road was never transferred from defendant Wayne County to defendant Dearborn.

Where a city has no jurisdiction over a road, the highway exception is not applicable and governmental immunity is available to the city. *Berry v Belleville*, 178 Mich App 541, 547; 444 NW2d 222 (1989). In *Berry*, this Court affirmed a grant of summary disposition in favor of the defendant city on the ground that the defendant city was entitled to governmental immunity with respect to a claim arising out of a traffic accident at the intersection of a city road and a county road because the intersection was under the jurisdiction of the defendant county road commission. We agree, and hold that in this case, like *Berry*, the trial court did not err in concluding that defendant Dearborn is entitled to governmental immunity because the intersection where the vehicular collision occurred is under the jurisdiction of defendant Wayne County.

Next, plaintiffs contend that the trial court erred in granting summary disposition in favor of defendant Dearborn because the trespass-nuisance exception to governmental immunity is applicable to this case. In so arguing, plaintiffs rely on *Ferris v Detroit Bd of Ed*, 122 Mich 315; 81 NW 98 (1899), and *Pound v Garden City School Dist*, 372 Mich 499; 127 NW2d 390 (1964). In both *Ferris* and *Pound*, our Supreme Court held that the plaintiff could assert a claim against a governmental agency (a public school) for personal injuries caused by the plaintiff's slipping and falling on snow and ice that had dripped or fallen from the roof of the defendant's school building. In *Ferris*, the snow and ice that dripped from the defendant's building accumulated on the plaintiff's private property whereas in *Pound*, the snow and ice that dripped from the defendant's building accumulated on a public sidewalk. In *Pound*, our Supreme Court characterized the public sidewalk as a place both "outside the limits of the defendant's premises," *id.* at 501 (quoting *Ferris*), and "where he [the plaintiff] has a right to be and which is not subject to the authority of defendant," *id*. at 502.

MCL 691.1407(1); MSA 3.996(107)(1) provides as follows:

> Except as otherwise provided in this act, all governmental agencies shall be immune from tort liability in all cases wherein the government agency is engaged in the exercise or discharge of a governmental function. *Except as otherwise provided in this case, this act shall not be construed as modifying or restricting the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed*. [(emphasis added).]

Because the italicized sentence preserves common-law exceptions to governmental immunity that were formulated before July 1, 1965, an historical approach is mandated in determining the proper scope of the nuisance exception to governmental immunity. *Li v Feldt (After Remand)*, 434 Mich 584, 591-592; 456 NW2d 55 (1990).

In *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139; 422 NW2d 205 (1988), a majority of our Supreme Court, in plurality opinions, held that a limited trespass-nuisance exception to

governmental immunity was historically recognized in this state's caselaw. *Id*. at 145 (Brickley, J., with Riley, C.J., and Cavanagh, J.), 205 (Boyle, J., concurring). In his lead opinion, Justice Brickley defined trespass-nuisance as "a direct trespass upon, or the interference with the use or enjoyment of, land that results from a physical intrusion caused by, or under the control of, a governmental entity." *Id*. at 145. In determining that trespass-nuisance was an historically recognized exception to governmental immunity, one of the cases cited and discussed by Justice Brickley was *Ferris*, which has been characterized as "a classic trespass-nuisance case." *Id*. at 159-160; see also *Li v Feldt (After Second Remand)*, 439 Mich 457, 473; 487 NW2d 127 (1992) (Cavanagh, C.J., with Brickley and Mallett, JJ.). However, unlike this case but like *Ferris*, the trespass-nuisance exception to governmental immunity concerns some invasion of a *private* property interest. See, generally, *Hadfield*, *supra* at 154-164, 175 (Brickley, J., with Riley, C.J., and Cavanagh, J.); see also *Ward v Frank's Nursery & Crafts, Inc*, 186 Mich App 120, 127; 463 NW2d 442 (1990).

In *Hadfield*, Justice Brickley noted that "*Pound* might be used as the basis for an argument that a form of public nuisance, which mirrors the trespass-nuisance situation but occurs on public property, should be included within the historically recognized exception." *Id*. at 176. However, Justice Brickley declined to decide this question because the facts of *Hadfield* and its companion cases were not analogous to *Pound*. *Id*. at 177. In *Li (After Second Remand)*, Chief Justice Cavanagh, again only in a plurality opinion, held that *Pound* "must be considered as part of the historical case law" for purposes of determining the scope of the common-law nuisance exception to governmental immunity. *Id*. at 472 (Cavanagh, C.J., with Brickley and Mallett, JJ.). However, Chief Justice Cavanagh found that the facts of the cases then before the Court did not fall "within the narrow exception to governmental immunity enunciated in *Pound*" because the injuries in those cases "occurred in an area subject to the authority of the defendant." *Id*. at 474. Chief Justice Cavanagh concluded that "[i]n sum, *Pound* did not establish any public nuisance exception to governmental immunity; rather, it established, at most, a narrow corollary to the narrow trespass-nuisance exception recognized by cases such as *Ferris* and *Hadfield*." *Id*.

We acknowledge that the facts of this case may be analogized to *Pound*. Specifically, plaintiffs claim that defendant Dearborn entered public property under the jurisdiction of defendant Wayne County (Miller Road and its associated right of way) and erected a no-parking sign without obtaining the requisite permit. Arguably, defendant Dearborn's conduct could constitute a trespass onto property where plaintiffs had a right to be "and which is not subject to the authority of defendant." *Pound*, *supra* at 502; see also *Peterman v Dep't of Natural Resources*, 446 Mich 177, 205; 521 NW2d 499 (1994) (characterizing as a classic trespass the permanent placement of an object onto a plaintiffs' private property against the will of the plaintiff).

However, plaintiffs have simply cited *Pound* in their brief on appeal. Plaintiffs have neither engaged in the historical analysis required in determining the scope of the nuisance exception to governmental immunity nor have they briefed the subsequent nonbinding treatment of *Pound* by the various plurality opinions of our Supreme Court. Moreover, despite certain arguable factual similarities, this case is also factually distinguishable from *Pound* in certain respects.

The appealing party has the burden of establishing that the trial court's ruling was erroneous. *Henson v Veterans Cab Co of Flint*, 384 Mich 486, 494; 185 NW2d 383 (1971). A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997). Likewise, this Court will decline to consider issues that are given only cursory treatment in a party's brief, with little or no citation of supporting authority. *Community National Bank of Pontiac v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 521; 407 NW2d 31 (1987). Accordingly, in light of the factual distinctions between this case and *Pound* and the cursory treatment given this issue by plaintiffs, we decline to consider whether plaintiffs' case against defendant Dearborn falls within some narrow corollary to the narrow trespass-nuisance exception to governmental immunity.

Thus, we affirm the grant of summary disposition in favor of defendant Dearborn. *McKeen, supra*.

In summary, we reverse the grant of summary disposition in favor of defendant Wayne County and remand for further proceedings consistent with this opinion. We affirm the grant of summary disposition in favor of defendant Dearborn. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage

[1] The trial court also granted summary disposition of plaintiffs' nuisance claim against defendant Wayne County. On appeal, plaintiffs do not challenge this ruling.

[2] The 1996 amendment contains stylistic, not substantive, changes to the statutory language.