STATE OF MICHIGAN

COURT OF APPEALS

JEAN M. MCDONALD,

Plaintiff-Appellee,

v

BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY,

Defendant-Appellant.

UNPUBLISHED
April 14, 1998

No. 198022
Court of Claims
LC No. 95-015859-CM

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment for plaintiff entered by the trial court sitting as the trier of fact in the Court of Claims. We affirm.

This case arises out of an injury suffered by plaintiff when she fell on steps outside of Brody Hall, a residence hall, at Michigan State University. Plaintiff was entering the building on June 23, 1994, at 9:30 p.m. When plaintiff reached the area at the top of the steps, the heel of her shoe became stuck in a hole in the cement. Plaintiff fell forward and struck her face, which resulted in a nose fracture. Defendant initially moved for summary disposition, asserting that the public building exception to governmental immunity did not apply because the steps upon which plaintiff fell were located outside of the building. The trial court denied the motion for summary disposition and the case proceeded to a bench trial. The trial court found in plaintiff's favor. The trial court found that the steps constituted a dangerous and defective condition and that defendant was liable to plaintiff for damages. The total award amounted to $234,575, which judgment was entered for plaintiff on September 6, 1996.

On appeal, defendant raises three issues. It contends that the trial court erred in denying its motion for summary disposition regarding the public building exception to governmental immunity. It also argues that the trial court erred in determining that the surface imperfections in the steps constituted a dangerous or defective condition. Finally, defendant argues that even if it was liable, the trial court erred in failing to reduce the damages awarded to present cash value.

Defendant first contends that the trial court erred in denying defendant's motion for summary disposition. This Court reviews a trial court's grant or denial of a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Brown v Genesee Co Bd of Comm'rs*, 222 Mich App 363, 364; 564 NW2d 125 (1997). When a motion for summary disposition is brought under to MCR 2.116(C)(7) alleging governmental immunity, the pleadings, affidavits, depositions, admissions, and any other documentary evidence presented are reviewed in a light most favorable to the nonmoving party to determine whether the moving party has established that it is entitled to governmental immunity. *Id.*, pp 364-365; MCR 2.116(G)(5). In order to survive a motion brought under this subrule, the plaintiff must allege facts that justify an exception to governmental immunity. *Brown*, *supra,* p 365.

Generally, governmental agencies, such as Michigan State University, are immune from tort liability for actions taken while performing governmental functions. MCL 691.1407(1); MSA 3.996(107)(1). Under the public building exception to governmental immunity, a governmental agency engaged in a government function is subject to liability in situations where an injury results from a dangerous or defective condition of a building. MCL 691.1406; MSA 3.996(106); *Wade v Dep't of Corrections*, 439 Mich 158, 163-164; 483 NW2d 26 (1992). To fall within the narrow confines of the public building exception, a 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 public building itself exists, (4) the governmental agency had actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable period of time. *Jackson v Detroit*, 449 Mich 420, 428; 537 NW2d 151 (1995).

In this case, only the third element is at issue. Defendant argued that it was entitled to summary disposition because the alleged defect was not part of the building itself. This Court, in *Maurer v Oakland Co Parks and Recreation Dep't (On Remand)*, 201 Mich App 223, 229; 506 NW2d 261 (1993), rev'd on other grounds sub nom *Bertrand v Alan Ford, Inc*, 449 Mich 606, 621; 537 NW2d 185 (1995), held that steps leading to a building providing the only means of ingress and egress formed part of the building for purposes of the public building exception. In the present case, the steps containing the alleged defect provided the only means of ingress and egress to and from the building's southwest entrance. Moreover, the steps were related to the permanent structure or physical integrity of the building because they led to the granite porch attached to the foundation that lead immediately to the doors. See, *Maurer, supra,* pp 229-230.

We find *Maurer* to be factually indistinguishable and we are required to follow it pursuant to MCR 7.215(H). Moreover, we would follow *Maurer* regardless of the dictates of MCR 7.215(H) because we believe that this Court in *Maurer* correctly held that steps leading to a building providing the only means of ingress and egress formed part of the building for purposes of the public building exception.

The fact that the Supreme Court reversed this Court's decision in *Maurer* is not dispositive in this situation because the Supreme Court specifically did not address the governmental immunity issue. See *Bertrand, supra,* p 621. The Supreme Court reversed this Court's decision regarding only the

issue of the unreasonable risk of harm, finding that the plaintiff's allegation that she did not see the step did not create a material factual dispute as to whether the step posed an unreasonable risk of harm. *Id.* Therefore, because the Supreme Court did not address the governmental immunity issue, we believe that the holding in *Maurer* that steps leading to a building providing the only means of ingress and egress formed part of the building for purposes of the public building exception is intact and we will follow it. See *Straman v Lewis*, 220 Mich App 448, 451; 559 NW2d 405 (1996) (the publication of an opinion of this Court creates binding precedent statewide and the opinion remains binding until the Supreme Court alters the lower court decision or questions its rationale); *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 197 Mich App 482, 490-491; 496 NW2d 373 (1992), aff'd 445 Mich 558; 519 NW2d 864 (1994) (where the Supreme Court does not reach the merits of an issues addressed in this Court, that issue still has precedential value). Accordingly, on the authority of *Maurer*, the trial court did not err in denying defendant's motion for summary disposition regarding the public building exception to governmental immunity.

Next, defendant argues that the trial court's finding that surface imperfections in the walkway leading to the southwest entrance of the building constituted a defective or dangerous condition was clearly erroneous. See MCR 2.613(C).

In order to come within the narrowly construed public building exception, the alleged dangerous or defective condition must be a physical condition of the building rather than a transitory condition unrelated to the permanent structure or physical integrity of the building. *Wade, supra*, pp 168-170. In the present case, the evidence indicated that the imperfections, or holes, in the concrete on the top step of the walkway were in place for approximately thirty to forty years before the accident occurred. Accordingly, the holes were part of the permanent structure of the building and did not constitute a transitory condition. Further, given (1) plaintiff's testimony that the heel of her high-heeled shoe fit into seven or eight of the holes on the top step of the walkway, (2) Dennis Donahue's (a private investigator for plaintiff) testimony that one of the holes was almost one half inch deep and two inches wide, (3) the testimony of William Pulling, defendant's maintenance supervisor, that a woman walking with high-heeled shoes at night could get a heel caught in one of the holes and that the holes posed a danger in such a situation, and (4) the parties' stipulation that the area was not illuminated, we hold that the trial court's finding the that imperfections constituted a dangerous or defective condition was not clearly erroneous.

Lastly, defendant argues that the trial court erred in inflating plaintiff's damages for future medical costs and pain and suffering by five percent a year without reducing the damages to present cash value.

MCL 600.6306(1)(d), (e); MSA 27A.6306(1)(d), (e) provides that all future medical and other health care costs and all future noneconomic damages must be reduced to "gross present cash value." MCL 600.6306(2); MSA 27A.6302(2) provides that "gross present cash value" is the total amount of future damages reduced to present value at a rate of five percent a year for each year in which the damages accrue. In this case, the trial court awarded future medical expenses at $1,050 a year for twenty years[1], "inflated" at five percent a year, for a total of $33,670. The trial court also

awarded future pain and suffering damages at $5,000 a year for twenty years, "inflated" at five percent a year, for a total of $165,780.

The trial court's judgment comports with the statutory requirements of MCL 600.6306; MSA 27A.6306. Although the use of the word "inflated" in the judgment may not have been the best choice of words, the trial court's calculation of damages is entirely in accord with § 6306. See, e.g., *Nation v W. D. E. Electric Co*, 454 Mich 489, 491, n 2; 563 NW2d 233 (1997). Accordingly, we find no error in the calculation of damages because the trial court did in fact reduce the future damages to "gross present cash value" as that term is defined in § 6306(2).

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage

[1] The trial court used twenty years for the future damages because that was plaintiff's life expectancy.