

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA DRAZIN,

Plaintiff-Appellee,

v

CITY OF SOUTHFIELD,

Defendant-Appellant.

UNPUBLISHED

January 4, 2002

No. 209989

Oakland Circuit Court

LC No. 96-518879-NO

ON REMAND

Before: Hoekstra, P.J., and Hood and Markey, JJ.

PER CURIAM.

This case is before us on remand from the Supreme Court for reconsideration in light of its recent decision in *Fane v Detroit Library Comm*, 465 Mich 68; 631 NW2d 678 (2001). After doing so, we again reverse the trial court's denial of defendant's motion for summary disposition.

We stated in our previous opinion that

this case involves plaintiff's slip and fall on an elevated walkway that passes over a roadway and connects on the other side to the roof of a parking structure, which serves as a plaza to several public buildings. At issue is whether the parking structure with its plaza-roof, and the connected walkway, are a public building within the exception to governmental immunity. [*Drazin v City of Southfield*, unpublished opinion per curiam of the Court of Appeals, issued June 16, 2000 (Docket No. 209989).]

In *Fane*, the Supreme Court addressed the proper analysis to determine whether an item or area outside a public building falls within the public building exception to governmental immunity. *Fane, supra* at 74-78; see generally MCL 691.1407(1) and MCL 691.1406. The Supreme Court began by explaining that the core holding of its earlier decision in *Horace v City of Pontiac*, 456 Mich 744; 575 NW2d 762 (1998), "is that mere sidewalks and walkways are clearly outside the scope of the public building exception." *Fane, supra* at 76. However, the Supreme Court rejected a bright-line interpretation of *Horace* that would preclude any recovery for injuries resulting from conditions that exist outside an entrance or exit to a building. *Id.* at 77.

The Supreme Court next divided into two categories other items or areas that are not mere sidewalks or walkways that exist outside a public building. The first category is fixtures. The Supreme Court defined fixtures as “items of personal property that have a possible existence apart from realty,” but may be assimilated into realty by annexation. *Id.* at 78. Any other items or areas constitute the second category. With regard to this category, the Supreme Court explained:

When a fixtures analysis does not apply, in determining whether an item or area outside the four walls of a building is “of a public building,” the courts should consider whether the item or area where the injury occurred is physically connected to and not intended to be removed from the building. [*Id.*]

In the present case, the elevated walkway at issue is, in our opinion, an item that is more than a mere walkway. Thus, *Fane* is controlling on our resolution of this case. Applying the *Fane* analysis here, we first note that the elevated walkway is not a fixture; it has no use or purpose if separated from the realty to which it is fixed. Hence, we must look to whether the elevated walkway “is physically connected to and not intended to be removed from the building.” *Id.* The key factor here is that the elevated walkway in question is not connected to a public building; rather, the elevated walkway is connected to an outdoor plaza area from which public buildings may be accessed. Thus, the elevated walkway is separated from any public building by the plaza area rather than being “physically connected to” any public building.¹ Nor can it be said that the walkway is part of the plaza area itself. The two are separate and distinct from one another. For purposes of determining whether they are physically connected to a public building, each requires its own analysis.²

We acknowledge that at the point where the elevated walkway is attached to this plaza area, the plaza itself is situated directly over a public parking ramp, and therefore functions in part as a roof for the parking structure below. This fact, however, is not controlling. The purpose of the walkway is to provide a means to access the plaza area that serves the various government buildings at that location, rather than the roof of a parking structure. Even if the parking structure is a public building for purposes of the exception,³ the walkway is not designed to be physically connected to it. As we stated in our previous opinion, “[t]here is, in short, nothing about the walkway to suggest that its connection to the parking structure is more than incidental. It is not an adaptation to the parking structure itself.” *Drazin v City of Southfield*, unpublished opinion per curiam of the Court of Appeals, issued June 16, 2000 (Docket No. 209989). On this record, we conclude that plaintiff’s claim is barred by governmental immunity, and thus defendant is entitled to summary disposition.

¹ We need not reach the second component of the analysis, whether it is intended to be removed from the building. If required, we would conclude that there is no intention to remove the walkway.

² We make no comment regarding whether the plaza area fits within the exception.

³ In our original opinion, we noted that it is not clear whether a parking structure is a public building within the meaning of the statute. We again find it unnecessary to resolve that question.

Reversed.

/s/ Joel P. Hoekstra

/s/ Harold Hood

/s/ Jane E. Markey