

STATE OF MICHIGAN
COURT OF APPEALS

KATHY A. NAPPIER, Personal Representative of
the Estate of JOSEPH NAPPIER, Deceased,

Plaintiff-Appellant,

v

LANSING SCHOOL DISTRICT,

Defendant-Appellee.

UNPUBLISHED
November 13, 2003

No. 240570
Ingham Circuit Court
LC No. 01-093559-CZ

Before: O’Connell, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiff appeals of right the trial court’s grant of defendant’s motion for summary disposition under MCR 2.116(C)(7) and (10). We affirm.

The issue in this case is whether a school building’s covered porch contained a defect when the concrete slabs of an abutting walkway sank into the ground, exposing the porch’s edge and creating an abrupt ridge where the walkway and porch met. If the defect lies in the building, plaintiff can maintain her suit against defendant for her young son’s fatal trip and fall by asserting the building exception to governmental immunity. But the law requires us to narrowly apply the exception and examine the building itself for a defect, so we hold that the defective condition of the walkway abutting the building’s porch is not a defective condition of the building and affirm the trial court.

The parties, for purposes of this motion, did not materially dispute the facts. On October 12, 1998, decedent was walking at a hurried pace toward the entrance of Atwood Elementary School. The entrance opened to a wide covered porch area that contained a modern colonnade and opened in turn onto a broad walkway. The walkway originally lay flush against the porch and, with the porch, created a large paved and partially covered courtyard. Gradually, a portion of the walkway bordering the porch settled so that a concrete ridge roughly two inches high ran along the juncture of the walkway and porch. By all accounts, decedent tripped and fell over the exposed ridge and hit his head on the porch’s concrete floor. Decedent’s hands were pinned under the straps of his backpack, so he could not break his fall. Tragically, decedent suffered severe brain injuries, drifted in and out of consciousness, and died two days later.

Against plaintiff’s ensuing wrongful death action, defendant asserted governmental immunity as a complete defense. In its order granting defendant’s summary disposition motion,

the trial court applied the defense and rejected plaintiff's argument that the facts invoked the building exception to governmental immunity. Plaintiff's issues on appeal revolve around whether the trial court erred when it held that governmental immunity, and not the building exception, applied in this case. We review de novo whether a trial court properly granted summary disposition based on governmental immunity. *Kerbersky v Northern Michigan Univ*, 458 Mich 525, 529; 582 NW2d 828 (1998).

A litigant cannot successfully sue a governmental agency for personal injury unless some exception to broad governmental immunity applies. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). The Legislature provides such an exception when the injury is caused by a dangerous or defective condition in a public building. *Id.* at 74-75; MCL 691.1406. We narrowly interpret any exception to governmental immunity and recognize that the exception will not apply unless the injury results from a dangerous or defective condition of the building itself. *Horace v City of Pontiac*, 456 Mich 744, 756; 575 NW2d 762 (1998).

Pictorial evidence clearly demonstrates that the sunken condition of the walkway caused the ridge. Repair of the walkway alone could have restored the entire paved area to a perfectly safe and defect-free state. So the walkway's condition, not the building's, created the danger or defect in this case. Because the alleged dangerous or defective condition only arose because of circumstances from which defendant enjoys immunity (negligent maintenance of its walkway), we are compelled to hold that "the dangerous condition was not caused by a dangerous or defective condition of the building itself." *Wade v Dep't of Corrections*, 439 Mich 158, 169; 483 NW2d 26 (1992). Therefore, the trial court did not err when it held that defendant enjoyed governmental immunity from plaintiff's suit.

Our resolution of the case in this manner relieves us from addressing whether the porch itself was merely a walkway outside an entrance as in *Horace*, or a part of the building itself as in *Fane*.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder