

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BARBARA J. LONG, Personal Representative of  
the ESTATE OF ALDEN LONG, and DAVID  
LONG, Personal Representative of the ESTATE  
OF JAMES ALDEN LONG,

UNPUBLISHED  
June 16, 2005

Plaintiffs-Appellants,

v

DEPARTMENT OF TRANSPORTATION,

No. 252751  
Court of Claims  
LC No. 01-018015-CM

Defendant-Appellee.

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Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order of the Court of Claims granting defendant’s motion for summary disposition. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs’ decedents were killed in an automobile accident in Ottawa County. According to plaintiffs, the decedents were waiting to turn left off of M-104 just west of I-96, when a vehicle coming west off the ramp from the latter onto the former struck the decedents’ vehicle, propelling it into oncoming traffic. Attempting to plead in avoidance of governmental immunity, plaintiffs assert that defendant violated a legal duty to close to the public the highways involved in the accident. The trial court rejected this theory, and granted summary disposition.

We review a trial court’s decision on a motion for summary disposition de novo. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999).

Governmental agencies in this state are generally immune from tort liability for actions taken in furtherance of governmental functions. MCL 691.1407(1). However, the immunity statute includes an exception for public highways, according to which “each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1402(1). The statute further provides that the “duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the

highway designed for vehicular travel and does not include . . . any . . . installation outside of the improved portion of the highway designed for vehicular travel.” *Id.*

“The state and county road commissions’ duty, under the highway exception, is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage.” *Nawrocki v Macomb County Road Commission*, 463 Mich 143, 183; 615 NW2d 702 (2000). Accordingly, the highway exception does not extend to faulty or missing signs or signals. *Id.* at 184. Likewise, a “road commission’s duty under the highway exception does not include a duty to design, or to correct defects arising from the original design or construction of highways.” *Hanson v Bd of Co Rd Comm’rs*, 465 Mich 492, 501; 638 NW2d 396 (2002). See also *McIntosh v Dep’t of Transportation (On Remand)*, 244 Mich App 705, 710; 625 NW2d 123 (2001) (the Department of Transportation had “no duty, under the highway exception to governmental immunity, to correct . . . design defects”).

Plaintiffs suggest that a well-maintained road surface is nonetheless not safe or convenient for public travel if the overall construction or design is so flawed as to render the road inherently dangerous. Indeed, plaintiffs suggest that the state is obliged in such cases to close the defective road, not invite the public to face its hazards by maintaining the surface.

Authority cited by plaintiffs for the proposition that the law once imposed liability on the state if it failed to close an inherently dangerous road have been completely supplanted by recent legislation and jurisprudence. To hold that the highway exception extends to failure to close a road that remains dangerous despite having good surface conditions would be to impose liability for design or construction defects, in direct contravention of *Nawrocki, supra*; *Hanson, supra*; *McIntosh, supra*, and related cases.

Plaintiffs describe hypothetical situations where serious injustice would follow for want of an exception to governmental immunity. But *Nawrocki, supra* at 158, reiterated that “the immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed” (emphases in the original). That case recognized that governmental and private tortfeasors are to be treated differently, and that, accordingly, “some tort claims, against a governmental agency, will inevitably go unremedied.” *Id.* at 156-157. Moreover, plaintiffs make issue of only such typical design or construction features as “a left side ramp exiting I-96 onto M-104 causing awkward angles, inadequate side lines and insufficient deceleration,” “an inadequate passage way for vehicles traveling west off of I-96 to pass around vehicles waiting to turn south off M-104,” and “inadequate signage.” Plaintiffs thus allege defects of the sort that current law has rendered inactionable against the state.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Bill Schuette  
/s/ Stephen L. Borrello