

STATE OF MICHIGAN
COURT OF APPEALS

IDA ISAAC and ALEXANDER ISAAC,

Plaintiffs-Appellees,

v

STANDARD PARKING CORPORATION,

Defendant,

and

BISHOP INTERNATIONAL AIRPORT
AUTHORITY,

Defendant-Appellant.

UNPUBLISHED
February 15, 2007

No. 272539
Genesee Circuit Court
LC No. 05-082172-NO

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendant Bishop International Airport Authority (hereafter “defendant”)¹ appeals as of right an order denying its motion for summary disposition based on governmental immunity under MCR 2.116(C)(7) and (C)(10). We reverse and remand for entry of an order granting summary disposition to defendant. This appeal is being decided without oral argument under MCR 7.214(E). Because neither the highway exception, nor the proprietary function exception apply with respect to defendant’s airport operation, we reverse.

This case arises from an apparent fall in a parking lot at defendant’s airport. Plaintiffs brought claims against defendant under the highway and proprietary function exceptions to governmental immunity. A trial court’s decision regarding a motion for summary disposition under MCR 2.116(C)(7) is reviewed de novo, and requires consideration of all documentary evidence filed or submitted by the parties. *Diamond v Witherspoon*, 265 Mich App 673, 681; 696 NW2d 770 (2005). Similarly, the denial of summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Greene v A P Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006).

¹ Plaintiffs’ claim against defendant Standard Parking Corporation is not at issue in this appeal.

The documentary evidence submitted by the parties is viewed in the light most favorable to the party opposing the motion. *Id.* Summary disposition under MCR 2.116(C)(10) is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Defendant first argues that the trial court erred in failing to grant summary disposition in its favor with regard to plaintiffs' claims under the highway exception to governmental immunity.

MCL 691.1402(1) creates the highway exception to governmental immunity, under which in certain circumstances a person may recover damages from a governmental agency based on its failure to "keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel." In *Bunch v City of Monroe*, 186 Mich App 347, 348; 463 NW2d 275 (1990), the trial court granted summary disposition to the defendant city on a claim based on the principal plaintiff's fall in "an area designated as a passageway for vehicles" within a municipal parking lot. In affirming the trial court's decision, this Court stated that it was not persuaded by the plaintiffs' argument that the parking lot was within the scope of the highway exception. *Id.* at 348-349. This Court, noting that the highway exception is narrowly construed, further stated that it declined the "invitation to extend the highway exception to public parking lots which are owned or operated by governmental entities." *Id.* at 349. The undisputed evidence showed that the incident in this case occurred within a parking lot on defendant's grounds. Thus, as defendant correctly argues, under *Bunch, supra*, the highway exception to governmental immunity does not apply in this case.

The trial court's remarks might suggest that it declined to apply *Bunch, supra*, based on more recent case law holding that statutes should be applied according to their plain meaning, and that a fair reading of the relevant statutory definition of highway would include areas within a parking lot where vehicles are driven. However, the relevant statutory definition of "highway" is "a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway." MCL 691.1401(e). A parking lot does not fit within the plain or ordinary meaning of a public highway, road, or street. Particularly, as a matter of common usage of the language, a public highway, road, or street is a passage that is accessible for use by the public generally and is used to travel to and from various distinct locations. In contrast, a parking lot is located at one such location, and serves to provide a place for people arriving at the location to park, not as a passage to facilitate travel between various locations. Further, a parking lot is plainly not a bridge, sidewalk, trailway, crosswalk, or culvert on a public highway. Accordingly, *Bunch, supra*, is not inconsistent with more recent case law emphasizing adherence to the plain language of statutes because no part of a parking lot falls within the ordinary meaning of the applicable definition of a "highway." See, e.g., *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438-439; 716 NW2d 247 (2006) ("if the statute is plain and unambiguous, then this Court will apply the statute as written").

Summary disposition may be appropriate before discovery is complete if further discovery does not have a reasonable chance of locating factual support for the opposing party's position. *Stringwell v Ann Arbor Pub School Dist*, 262 Mich App 709, 714; 686 NW2d 825 (2004). Given the undisputed fact that the fall in this case occurred in a parking lot of defendant's airport, there is no reasonable chance that further discovery could provide support for a claim under the highway exception. Therefore, the trial court erred by denying defendant's

motion for summary disposition regarding plaintiffs' claims based on the highway exception to governmental immunity.

Defendant also argues that the trial court erred in failing to grant it summary disposition with regard to plaintiffs' claim under the proprietary function exception to governmental immunity. MCL 691.1413 defines a proprietary function as "any activity which is conducted *primarily* for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees" (emphasis added). Thus, one requirement for an activity to constitute a proprietary function is that it be conducted primarily for the purpose of producing a pecuniary profit. *Herman v Detroit*, 261 Mich App 141, 145; 680 NW2d 71 (2004).

A governmental entity operating an airport does not constitute a proprietary function. *Gen Aviation, Inc v Capital Region Airport Auth*, 224 Mich App 710, 713; 569 NW2d 883 (1997). It is readily apparent that the primary purpose of providing parking on the grounds of defendant's airport is to facilitate use of the airport for its core purpose of air travel by passengers who are beginning their flights from that airport. It does appear undisputed that defendant imposed monetary charges for use of the relevant parking area. Regardless, even if defendant had a secondary purpose of making some pecuniary profit from the parking operation, it is still apparent that the primary purpose of the parking operation was to directly facilitate practical use of the airport for its core non-proprietary function as an airport. Thus, as a matter of law, the parking operation did not constitute a proprietary function because it was not conducted primarily for the purpose of producing a pecuniary profit. Again, even though the discovery period had not closed, the trial court erred by denying defendant's motion for summary disposition regarding the proprietary function exception because there is no reasonable chance further discovery would support this claim. *Stringwell, supra* at 714.

We reverse the trial court's denial of defendant's motion for summary disposition and remand this case to the trial court for entry of an order granting summary disposition to defendant. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Pat M. Donofrio