

STATE OF MICHIGAN  
COURT OF APPEALS

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TERENZO DIDONATO,

Plaintiff-Appellant,

v

CITY OF WESTLAND,

Defendant-Appellee.

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UNPUBLISHED

April 15, 2003

No. 238955

Wayne Circuit Court

LC No. 01-122096-NO

Before: Jansen, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff fell off a small play structure shaped like a building which was located in a city park. The trial court ruled that plaintiff's claim did not come within the public building exception to governmental immunity, MCL 691.1406, and dismissed his complaint.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

To establish a claim within the public building exception,

a plaintiff must prove that (1) a governmental agency is involved, (2) the public building in question was 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 or failed to take action reasonably necessary to

protect the public against the condition after a reasonable period. [*Kerbersky v Northern Michigan Univ*, 458 Mich 525, 529; 582 NW2d 828 (1998).]

The statute does not define the term “building.” In *Ali v Detroit*, 218 Mich App 581; 554 NW2d 384 (1996), this Court found it proper to consult two dictionary definitions, i.e., “a relatively permanent, essentially boxlike structure having a roof and used for any of a wide variety of activities, as living, entertaining, or manufacturing,” and “structure designed for habitation, shelter, storage, trade, manufacturing, religion, business, education and the like. A structure or edifice enclosing a space within its walls, and usually, but not necessarily covered with a roof.” *Id.* at 584-585 (citations omitted). In light of those definitions, we held that a walled bus passenger shelter made of Plexiglas and steel and designed as a permanent shelter from inclement weather “was a building for purposes of the public building exception to governmental immunity.” *Id.* at 585.

In this case, the structure at issue is shaped like a building in that it is a boxlike structure having four walls and a roof enclosing a space. However, it is not designed for use as a building in that it does not provide a gathering space where people can engage in daily activities of life while protected from the elements. Rather, it is a small structure in the general shape of a building made for children to play in and on. Because the structure at issue is recreational equipment shaped like a building, we hold that it is not a public building as contemplated by the statute. Therefore, the trial court did not err in granting defendant’s motion.

Affirmed.

/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood