

STATE OF MICHIGAN
COURT OF APPEALS

TONYA M. BALLARD,

Plaintiff-Appellant,

v

CLINTON COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED
February 19, 2004

No. 244130
Clinton Circuit Court
LC No. 01-009332-NO

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

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

I. FACTS

Plaintiff sustained injuries when she lost control of her vehicle after it hydroplaned on several inches of water that covered DeWitt Road. She filed suit alleging that defendant breached its duty to maintain the highway in reasonable repair by failing to repair and maintain the drainage system so that water did not accumulate on the improved portion of the highway. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that defendant's duty to repair and maintain the highway was restricted to the improved portion of the highway designed for public travel and did not extend to the culverts that were not on that portion of the highway.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

III. ANALYSIS

Generally, a governmental agency is immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407. The highway exception to immunity requires a governmental agency having jurisdiction over a highway to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL

691.1402(1). The definition of “highway” includes “bridges, sidewalks, trailways, crosswalks, and culverts on the highway.” MCL 691.1401(e). MCL 691.1402(1) imposes duties and liability on state and county road commissions only for the traveled portion, paved or unpaved, of a highway actually designed for public travel, and not for installations outside the improved portion of the highway. *Nawrocki v Macomb County Rd Comm*, 463 Mich 143, 180; 615 NW2d 702 (2000). Determination of the applicability of the highway exception is a question of law. *Meeks v Dep’t of Transportation*, 240 Mich App 105, 110; 610 NW2d 250 (2000).

Plaintiff asserts that defendant was required to repair and maintain a culvert, an installation outside the improved portion of the highway. However, the plain language of MCL 691.1402(1), states that the duty of a state or county road commission to repair and maintain a highway extends only to the “improved portion of the highway designed for vehicular travel” and does not extend to any “installation outside of the improved portion of the highway designed for vehicular travel.” A state or county road commission is liable under the highway exception only if it fails to repair or maintain “the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel.” *Nawrocki, supra*, 183; see also *Soule v Macomb County Bd of Rd Comm’rs*, 196 Mich App 235, 237-238; 492 NW2d 783 (1992). Neither a culvert nor water standing on the road constitutes part of the physical structure of the roadbed designed for public travel. MCL 691.1402(1). The trial court correctly held that the highway exception operated to preclude liability in this case. *Meeks, supra; Nawrocki, supra*.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens