

STATE OF MICHIGAN
COURT OF APPEALS

PATSY SONDRREAL and JAMES SONDRREAL,

Plaintiffs-Appellees,

v

BISHOP INTERNATIONAL AIRPORT
AUTHORITY,

Defendant-Appellant,

and

FLINT AIR SERVICES, INC.,

Defendant.

UNPUBLISHED

March 15, 2005

No. 250956

Genesee Circuit Court

LC No. 02-074334-NO

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant Bishop International Airport Authority appeals as of right from an order denying its motion for summary disposition under MCR 2.116(C)(7), based on governmental immunity. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Bishop is a governmental agency that operates the international airport located in Flint, Michigan. Flint Air Services has a lease agreement with Bishop to provide “fixed base operation” services to FunJet Airlines, including the loading and unloading of passengers.

Plaintiff Patsy Sondreal¹ was a passenger on FunJet Airlines. When Sondreal’s flight arrived in Flint on the evening of January 17, 2001, the “jetway” (also referred to as the “jet bridge” or the “passenger boarding bridge”) was malfunctioning and could not be connected to

¹ Because James Sondreal’s claim is derivative, this opinion uses the surname “Sondreal” to refer to Patsy Sondreal only.

the airplane. Accordingly, employees of Flint Air instructed the passengers to deplane by the rear emergency stairs, walk around the plane and across the tarmac, climb the service stairs on the outside of the jetway, go through a door at the top, walk through the jetway, and enter the terminal. Sondreal slipped and fell on the first rung of the service stairs to the jetway, which she alleges was 12 to 14 inches above the ground, and suffered leg, knee, ankle, and back injuries.

The Sondreals filed a complaint against Bishop, alleging that the jetway service stairs were part of a public building under Bishop's control, and therefore fell under an exception to governmental immunity. The Sondreals alleged that the stairs were defective due to their height and inadequate illumination, that Bishop had actual or constructive knowledge of the defect, and that Bishop failed in its duty to repair it within a reasonable time, causing her multiple injuries. James Sondreal alleged a claim for loss of consortium.

Bishop filed a motion for summary disposition under MCR 2.116(C)(7), alleging that the public building exception did not apply because the jetway and its service stairs are not part of a public building and are not in an area that is open to the public. The Sondreals responded that the jetway is part of the building, and that Sondreal and her fellow passengers, all of whom were members of the public, were specifically instructed to use the service stairs to enter the terminal building.

Jetways provide access from the plane to the terminal building and vice versa. Jetways extend in and out from the building, move up and down to meet different sized planes, and swing from side to side. The jetway is bolted to the building, but it can be detached and removed. The opening from the jetway into the building has no stairs or other outside access, and it appears to be located at least at second-story height.

The service stairs are bolted to the outside of the jetway, at the end section that connects to the aircraft. The stairs are on casters and move with the jetway. The service stairs are intended for use by specially authorized airport and airline employees, and by emergency personnel as needed, not for passengers. The door at the top of the service stairs is kept locked and alarmed.

A Flint Air ground crew employee testified that he had allowed passengers to use the service stairs on three or four other occasions when the jetway had malfunctioned and never had any problems, and had never been told he could not do so. However, Bishop's director of maintenance asserted that the aircraft operating area is closed to the public and that any passengers allowed there would need to have a "close distance escort."

After a hearing, the trial court found that, while there was no question that Bishop was a government agency and that the terminal was a public building, there were questions of fact concerning whether the stairs were part of the building and whether they were defective. The trial court noted that "even if there is an . . . area not open to the public but it is a public building, then the public building exception to governmental immunity still applies." The trial court found that there were also questions of fact concerning whether the building was defective, whether the stairs were open to the public, and whether they were open to the public in this particular instance. The trial court denied Bishop's motion. This appeal followed.

II. Governmental Immunity

A. Standard Of Review

We review de novo a trial court's decision to grant a motion for summary disposition under MCR 2.116(C)(7) to determine whether the moving party was entitled to judgment as a matter of law.² Whether a governmental agency is immune from suit is a question of law that we also review de novo.³

B. Legal Standards

When reviewing a trial court's decision under MCR 2.116(C)(7), this Court must accept all well pleaded allegations as true, unless contradicted by other evidence, and construe them in favor of the nonmoving party.⁴ In determining whether there is a genuine issue of material fact, the court must consider the affidavits, depositions, admissions, and any other documentary evidence submitted by the parties.⁵ If no facts are in dispute, or if reasonable minds could not differ regarding the legal effect of the facts, the issue whether a claim is barred by governmental immunity is a question of law.⁶

C. The Public Building Exception

MCL 691.1406 provides, in pertinent part:

Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinary observant person for a period of 90 days or longer before the injury took place. [Emphasis added.]

In order to be covered by the public building exception, an injury “must be occasioned by the dangerous or defective condition of the building itself.”⁷ “As long as the danger of injury is

² *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

³ *Mack v Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002).

⁴ *Maiden*, *supra* at 119.

⁵ MCR 2.116(G)(5); *Maiden*, *supra* at 119.

⁶ *Maiden*, *supra* at 122.

⁷ *Reardon v Dep't of Mental Health*, 430 Mich 398, 410; 424 NW2d 248 (1988).

presented by a physical condition of the building, it little matters that the condition arose because of improper design, faulty construction, or absence of safety devices.”⁸

The Supreme Court has “consistently held that items which are found to be fixtures are considered to be part of the realty to which they are connected.”⁹ “[W]hether an object is a fixture depends on the particular facts of each case, . . . and is to be determined by applying three factors.”¹⁰ Those factors are:

[1] annexation to the realty, either actual or constructive; [2] adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and [3] intention to make the article a permanent accession to the freehold.¹¹

In *Wayne Co v Britton Trust*, the Supreme Court stated that “an object will not acquire the status of a fixture unless it is in some manner or means, albeit slight, attached or affixed, actually or constructively, to the realty.”¹² “Constructive annexation occurs where the item cannot be removed from the building without impairing the value of both the item and the building.”¹³ Thus, items that are part of or accessory to machines or equipment that are attached to the realty—such that one cannot readily be used without the other—are considered to be constructively attached to the realty and, therefore, are fixtures.¹⁴

In the present case, the jetway is bolted to the terminal building, and the service stairs are bolted to the jetway. It is undisputed that the jetway is the only safe and direct means of egress and ingress between an aircraft and the terminal for both passengers and employees. Without the service stairs, there is no ready access to the tarmac in the event of a jetway malfunction, and no direct access to the jetway by ground crew employees. While the jetway can be unbolted and removed, and its front portion is on wheels, it is clearly intended to remain in place. Indeed, if the jetway is removed, an opening would remain on the side of the building that would need to be barricaded, and would presumably impair the value of the building.

We conclude that the jetway and its service stairs are a fixture of a public building and, therefore, are part of the building. It is apparent that the jetway is actually attached to realty and

⁸ *Id.*

⁹ *Velmer v Baraga Area Schools*, 430 Mich 385, 394; 424 NW2d 770 (1988).

¹⁰ *Id.*

¹¹ *Id.*, quoting *Peninsular Stove Co v Young*, 247 Mich 580, 582; 226 NW 225 (1929). See also *Fane v Detroit Library Comm*, 465 Mich 68, 78; 631 NW2d 678 (2001), decided with *Cox v Univ of Mich Bd of Regents*.

¹² *Wayne Co v Britton Trust*, 454 Mich 608, 615; 563 NW2d 674 (1997). This condemnation case was cited with approval in *Fane*, *supra* at 78.

¹³ *Cox*, *supra* at 80.

¹⁴ *Wayne Co*, *supra* at 616-618.

that the service stairs are constructively attached. Further, the jetway is narrowly adapted to the use for which it is intended, and for which airport terminal gates are intended, namely, the loading and unloading of passengers. Lastly, the jetway is intended to be a permanent accession to the building. The fact that the jetway can be unbolted and removed, and used elsewhere, does not deprive it of its character as a fixture.

D. Open To The Public

We next address Bishop's argument that the public building exception is not applicable because the area where Sondreal fell is not open to the public. "To determine whether a building is open for use by members of the public, the nature of a building and its use must be evaluated."¹⁵ "If the government has restricted entry to the building to those persons who are qualified on the basis of some individualized, limiting criteria of the government's creation, the building is *not* open to the public."¹⁶ "Such limiting criteria would *not* include universal requirements such as *possession of a ticket . . .*"¹⁷ But even "where access to part of a building is limited, the public building exception may still apply *if* the building remains open for use by members of the public."¹⁸

In *Kerbersky v Northern Michigan Univ*,¹⁹ the Michigan Supreme Court found that the public building exception applied even though the plaintiff, a construction worker, was injured in a section of the building that was closed for renovations, while the rest of the building remained open to the public. The Court in *Kerbersky* also expressly overruled *Putnam v Wayne County Community College (After Remand)*,²⁰ a case in which this Court held that the public building exception did not apply where the area from which the plaintiff fell, a catwalk, was not open to the general public. The Court in *Kerbersky* stated that the plaintiff should have been allowed to invoke the public building exception because the auditorium itself was open to the public.²¹ In both *Kerbersky* and *Putnam*, the plaintiffs were authorized to be in the areas where they were injured.²²

In this case, even if only ticketed passengers (and employees) are permitted in the terminal area, the building itself was open to the public. Further, although the jetway service stairs were not generally open to the public, it is undisputed that Sondreal and her fellow

¹⁵ *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609, 618; 664 NW2d 165 (2003).

¹⁶ *Id.* (emphasis added).

¹⁷ *Id.* at n 8 (emphasis added).

¹⁸ *Id.* at n 9 (emphasis added).

¹⁹ *Kerbersky v Northern Michigan Univ*, 458 Mich 525, 526-527; 582 NW2d 828 (1998).

²⁰ *Putnam v Wayne County Community College (After Remand)*, 189 Mich App 557, 558-559; 473 NW2d 711 (1991).

²¹ *Id.* at 535-536.

²² See *Kerbersky*, *supra* at 527-528; *Putnam*, *supra* at 558-559.

passengers were expressly authorized to be there at the time of injury. Therefore, Sondreal's injury occurred in a public building.

For these reasons, the trial court correctly concluded that the Sondreals were not foreclosed from relying on the public building exception to governmental immunity. Accordingly, Bishop's motion for summary disposition was properly denied.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen