

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET FINNEY,

Plaintiff-Appellant,

v

CITY OF DETROIT and CITY OF DETROIT
WATER AND SEWERAGE DEPARTMENT,

Defendants-Appellees.

UNPUBLISHED

January 19, 2006

No. 256697

Wayne Circuit Court

LC No. 03-306090-NO

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants. We affirm.

Plaintiff sued defendants after she slipped and fell while crossing the street in front of her house in the city of Detroit in February 2001. Plaintiff claimed that she fell because of the condition of the road and gutters, which she described as “sloppy, wet, and dirtied.” She alleged that the hazardous condition was caused because defendants allowed “slop, mud, dirt and or/water to accumulate in the traveled portion of the roadway” Defendant city had retained a construction crew to dig up the roads to determine the source of a water leak. Plaintiff fell while a crew was repairing the water main that runs along the street in front of plaintiff’s home in Detroit. In her deposition, plaintiff stated that the “sole reason” she slipped and fell was because there was water and other material on the road. She also stated that the road was in “good condition.”

After discovery was completed, defendants moved for summary disposition, arguing that plaintiff’s action was barred by governmental immunity since the accident was not caused by a defect in the roadway itself, but rather by debris in the roadway. The trial court granted defendants’ motion for summary disposition.

On appeal, plaintiff argues that the trial court should not have granted summary disposition in favor of defendants based on governmental immunity because plaintiff’s claim falls within the scope of the highway exception to governmental immunity, MCL 691.1402. Plaintiff argues that genuine issues of material fact exist regarding whether defendants breached their duty to maintain the roadway in reasonable repair and keep the roadway reasonably safe for

public travel and whether plaintiff's fall was caused by defendants' failure to maintain the roadway.

"Governmental immunity is a question of law that is reviewed de novo," and decisions granting or denying summary disposition are also reviewed de novo. *Pierce v City of Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005), citing *Mack v Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002). "[A]ll well-pleaded allegations of fact must be accepted as true and construed in favor of the nonmoving party, unless contradicted by any affidavits, depositions, admissions, or other documentary evidence submitted by the parties." *Id.* at 177. "If no [material] facts are in dispute, or if reasonable minds could not differ regarding the legal effect of the facts, the question whether the claim is barred by governmental immunity is an issue of law." *Id.*, citing *Maiden v Rozwood*, 461 Mich 109, 120-122; 597 NW2d 817 (1999).

"The governmental tort liability act [GTLA], MCL 691.1401 *et seq.*, provides immunity for governmental agencies, including municipalities like defendant." *Haliw v City of Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001), rev'd on other gds 471 Mich 700 (2005),¹ on remand 266 Mich App 444; 702 NW2d 637 (2005). The immunity granted to governmental agencies "is broad, with narrowly drawn exceptions." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 149; 615 NW2d 702 (2000), citing *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 618; 363 NW2d 641 (1984) (emphasis in original). So long as the governmental agency was engaged in a governmental function, it is immune from liability unless an exception applies. *Haliw, supra* at 302. One exception, known as the highway exception, is narrowly construed "predicated upon a close examination of the statute's plain language," and courts are to avoid "add[ing] still another layer of judicial gloss to those interpretations of the statute previously issued." *Nawrocki, supra* at 150. Courts "apply those public policy choices made by the Legislature . . ." *Id.* at 151.

The highway exception is set forth in MCL 691.1402. First, the exception identifies the duty and its purpose: "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 (emphasis added). Next, it provides a cause of action for breach of said duty: "A person who sustains bodily injury or damage to his or her property *by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair* and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency." MCL 691.1402 (emphasis added). The duty of the governmental entity is to maintain the roads in reasonable repair; the statute's mention of "reasonably safe" does not create a separate duty to keep the roads reasonably safe. *Nawrocki, supra* at 148-184.

In *Haliw*, the issue regarded a natural accumulation of ice and snow on a sidewalk. *Haliw, supra* at 299. Summary disposition for the defendant was affirmed. *Id.* The *Haliw* Court held that a plaintiff cannot recover for a slip and fall injury incurred where the sole proximate cause was a natural accumulation of ice or snow, and there was no causal role played by a defect

¹ Our Supreme Court reversed *Haliw* on other grounds subsequent to the trial court's reliance upon it in this case.

in the sidewalk itself. *Id.* at 308. In *Nawrocki*, the issue concerned traffic control devices and a pedestrian injured on “cracked and broken pavement on the surface of” the improved portion of the roadway. *Nawrocki, supra* at 148, 152. The *Nawrocki* Court held that there must be a defect in the roadway, i.e., the improved portion designed for vehicular travel. *Id.* at 151. Summary disposition for the defendant was reversed. *Id.* at 146.

The GTLA defines “highway” to mean “a public highway, road, or street that is open for public travel” MCL 691.1401(e). The parties do not dispute that plaintiff tripped and fell on a public street under the jurisdiction of the city. The dispute is over whether the city breached its duty to keep the road in reasonable repair, and whether any alleged breach of that duty caused the accident.

We hold that defendants did not breach a duty to maintain the road in reasonable repair. Plaintiff admitted in her deposition that no defect in the roadway itself caused her slip and fall; rather, it was an accumulation of water and “slop” that caused her to fall. Under *Nawrocki* and *Haliw*, there must be a defect in the roadway itself in order for a claim of breach of the duty to maintain the roadway to avoid summary disposition. Plaintiff has not presented evidence that any defect in the roadway played a role in her accident; she admitted that it did not. Plaintiff has failed to generate a genuine issue of material fact on the issues of breach and causation.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis