

STATE OF MICHIGAN
COURT OF APPEALS

ANDREW JEAN RIDLEY, Personal
Representative of the Estate of JEFFREY
RIDLEY, Deceased,

Plaintiff-Appellee,

v

CITY OF DETROIT, DEPARTMENT OF PUBLIC
LIGHTING,

Defendant-Appellant,

and

GUYANNE C. COLLINS,

Defendant.

FOR PUBLICATION
July 17, 2001
9:05 a.m.

No. 194350
Wayne Circuit Court
LC No. 93-318129-NI

ON REMAND

Updated Copy
September 28, 2001

Before: Sawyer, P.J., and Murphy and Doctoroff, JJ.

DOCTOROFF, J.

This case is before us on remand¹ from the Supreme Court for reconsideration in light of *Evens v Shiawassee Co Rd Comm'rs*, 463 Mich 143; 615 NW2d 702 (2000). In our previous decision, we affirmed the trial court's entry of judgment for plaintiff, rejecting defendant's² argument that plaintiff's claim was barred by governmental immunity. *Ridley v Detroit*, 231 Mich App 381; 590 NW2d 69 (1998). After reviewing the *Evens* decision, we conclude that the Supreme Court's modification of the highway exception to governmental immunity does not apply to the facts of this case and we reaffirm our previous holding.

In our previous opinion, we briefly summarized the facts of this case as follows:

¹ *Ridley v Detroit*, 463 Mich 932 (2000).

On July 25, 1992, at approximately midnight, Jeffrey Ridley was attacked on Jefferson Avenue by a group of eight to ten men. After the beating, Jeffrey tried to stand, but was struck by an automobile driven by defendant Collins and knocked down. Jeffrey was struck again by another automobile a minute or two later. He died. Several witnesses at trial testified that the street lights along Jefferson Avenue were not functioning on the night Jeffrey was killed and had not been functioning for some time. The trial court found that defendant [city of Detroit] had been negligent in failing to provide street lighting and found liability and damages for plaintiff. [*Ridley, supra* at 383-384.]

Defendant argued that plaintiff's claim was barred by governmental immunity because its liability was limited to defects arising out of its failure to maintain the improved portion of the highway designated for vehicular traffic, citing MCL 691.1402(1). However, we found that the portion of the statute limiting liability to "the improved portion of the highway designed for vehicular travel" applied only to the state and county road commissions, and that, as a municipality, defendant's liability would not be limited by the final clause of MCL 691.1402(1). *Ridley, supra* at 385-386.

In its decision in *Evens*, our Supreme Court sought to clarify existing authority establishing the limits of the highway exception to governmental immunity. The Court began by carefully examining the language of MCL 691.1402 and concluded that the highway exception to governmental immunity establishes a general duty on all governmental agencies to maintain the highways under their jurisdiction in reasonable repair. *Evens, supra* at 160. The Supreme Court further concluded, consistent with our holding in *Ridley*, that the last clause of MCL 691.1402(1) limiting liability only to the improved portion of the highway designated for vehicular travel applies specifically to the state and county road commissions. *Evens, supra* at 161-162. Because the defendants in both *Evens* and its companion case, *Nawrocki v Macomb Co Rd Comm*, were county road commissions, the Supreme Court found that the last clause of the statute applied to limit the defendant's liability in both cases. *Id.* at 172, 184.

However, in this case, defendant is a municipality, not the state or a county road commission. Because the defendants in *Evens* and *Nawrocki* were county road commissions, the Supreme Court did not address what, if any, limitations to the highway exception to governmental immunity apply to units of government that are not the state or county road commissions. Hence, the Supreme Court's opinion in *Evens* did not alter the essential holding of our previous decision. In fact, the language of *Evens* implicitly affirms our holding that the final clause of MCL 691.1402(1) applies only to the state or county road commissions. Therefore, we reaffirm our conclusion that defendant's liability in this case is not limited to maintaining the improved portion of the highway designated for vehicular traffic.

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² Defendant Guyanne C. Collins is not a party to this appeal. For purposes of this opinion, the term defendant will be used only to refer to the city of Detroit.

We also held in our previous opinion that a streetlight is not a utility pole and is not excluded by definition from the highway exception to governmental immunity. *Ridley, supra* at 387. Whether a streetlight is included within the definition of a utility pole under MCL 691.1401(e)³ and would thereby be excluded from the definition of a highway was not at issue in either *Evens* or *Nawrocki* and was not addressed by the Supreme Court's opinion in those cases. Therefore, our previous holding remains unaltered.

However, one of the holdings of our previous decision does require new analysis in light of the *Evens* decision. Defendant argued that it should not be liable for the decedent's injuries because the lack of lighting on Jefferson Avenue was not an unreasonably unsafe condition. However, we reached the opposite conclusion, specifically finding that, under the facts of the case, the lack of lighting was unreasonably unsafe. *Ridley, supra* at 388.

As noted above, the Supreme Court in *Evens* construed the language of MCL 691.1402(1) as creating a general duty on the part of governmental agencies to maintain highways in their jurisdiction "in reasonable repair." *Evens, supra* at 160. In *Ridley*, we evaluated defendant's liability on the basis of whether the lack of illumination was "unreasonably unsafe." *Ridley, supra* at 387-388. Therefore, we must reevaluate this conclusion on the basis of the more specific standard announced in *Evens*.

Taking into account the revised standard, we nevertheless conclude that we reached the correct result in *Ridley*. Because we held that a streetlight is not excluded from the definition of a highway under MCL 691.1401(e), defendant was under a duty to maintain the streetlights on Jefferson Avenue in reasonable repair. *Evens, supra* at 160. As we stated in *Ridley*:

The determination of reasonableness in the context of liability of a governmental agency to maintain highways "must necessarily be made by overview of the factors of a given case, such as the danger imposed by the defective article or lack of safety device or design, the increase in safety provided by the new device or design, the cost of repair or installation, and others." [*Ridley, supra* at 388, quoting *Hall v Dep't of State Hwys*, 109 Mich App 592, 605; 311 NW2d 813 (1981).]

We are persuaded that streetlights designated to illuminate a heavily traveled urban highway that, according to eyewitnesses, had not been functioning for at least two months before the accident at issue in this case could not be considered to be in reasonable repair.⁴ Because

³ The version of MCL 691.1401(e) that was in effect in 1992 defined "highway" as "every public highway, road, and street which is open for public travel and shall include bridges, sidewalks, crosswalks, and culverts on any highway. The term highway does not include alleys, trees, and utility poles."

⁴ This Court recently addressed the scope of a municipality's duty under the highway exception to governmental immunity in light of our Supreme Court's decision in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143; 615 NW2d 702 (2000), the companion case to *Evens, supra*. In *Weakley v Dearborn Heights (On Remand)*, 246 Mich App 322; ___ NW2d ___ (2001), this Court reversed its previous holding and affirmed the trial court's order granting summary disposition in favor of

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defendant failed to meet its duty to maintain the streetlights in reasonable repair, we again reject defendant's argument that it should not have been found liable.

Affirmed.

Murphy, J., concurred.

/s/ Martin M. Doctoroff

/s/ William B. Murphy

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the defendant with regard to the plaintiff's claims concerning a missing section of a public sidewalk on which the plaintiff tripped. Although this Court in *Weakley* reached an apparent contrary result to our decision in this case, we see no conflict where the *Weakley* Court agreed with our determination that the appropriate duty of the municipality is to maintain the highway in reasonable repair. *Id.*