

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE MAJOR,
Plaintiff-Appellant,

UNPUBLISHED
September 15, 2005

v

CITY OF DETROIT,
Defendant-Appellee.

No. 261583
Wayne Circuit Court
LC No. 04-403080-NO

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Plaintiff, Michelle Major, appeals as of right the trial court order granting summary disposition in favor of defendant, City of Detroit. We affirm.

On an evening in March 2003, plaintiff approached a vehicle with the intention of climbing into the passenger seat. The vehicle was parked with the passenger side near the curb on Fairview Street in Detroit. The road was covered with a thick layer of ice that extended above the curb. As plaintiff opened the door and prepared to get into the vehicle, she stepped onto the ice that covered the road. She slipped and fell on the ice, sustaining an injury to her left ankle.

Plaintiff filed the instant action pursuant to the highway exception to governmental immunity, MCL 691.1402(1). Plaintiff alleged that defendant maintained the street in a hazardous condition by creating and allowing a defect to exist such that water did not drain properly and ice accumulated across the width of the street and above the curb level. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). The trial court granted defendant's motion pursuant to MCR 2.116(C)(7) and (10),¹ relying on *Haliw v Sterling Heights*, 464 Mich 297, 301; 627 NW2d 581 (2001).

¹ Although plaintiff asserts that the trial court also granted summary disposition pursuant to MCR 2.116(C)(8), it is evident from the transcript that the trial court relied only on MCR 2.116(C)(7) and (10).

Plaintiff argues that the trial court erred in granting defendant summary disposition because the road was not fit for public travel pursuant to MCL 691.1402(1). We review de novo a trial court's decision on a motion for summary disposition. *Haliw, supra* at 301. MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, requiring us to consider all documentary evidence filed or submitted by the parties. *Id.* at 301-302. In reviewing a motion under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action. *Id.* at 302. Summary disposition is properly granted if there is no genuine issue with respect to any material fact. *Id.* We also review de novo questions of statutory construction, as they are questions of law. *Id.*

MCL 691.1402(1) provides that local governments are responsible for maintaining public roads and sidewalks in reasonable repair so that they are reasonably safe and fit for public travel. *Haliw, supra* at 303. Plaintiff contends that this exception to governmental immunity is purely statutory and does not require judicial interpretation. However, the Michigan Supreme Court has held that, in order to hold a government liable for a slip-and-fall injury caused by ice and an existing defect in a sidewalk, a plaintiff must prove that the combination of the existing defect and the ice proximately caused her to slip and fall. *Id.* at 309-311. Plaintiff urges us to disregard this proximate cause requirement because it is not explicitly stated as such in MCL 691.1402(1). Regardless of whether we agree with the proximate cause requirement of *Haliw*, we are bound by the precedential effect of the opinion and obligated to follow its holding in deciding the instant case. *Kuhn v Secretary of State*, 228 Mich App 319, 330; 579 NW2d 101 (1998). We therefore decline plaintiff's invitation to apply the statute without considering the applicable interpretations found in case law.

Plaintiff next argues that the trial court erred in relying on *Haliw, supra* because it does not apply to the facts of the instant case, is not precedentially binding, and should not be extended to the present case.

The plaintiff in the *Haliw* case slipped and fell on a patch of ice that had formed where two sections of a sidewalk met. *Haliw, supra* at 299. Because the plaintiff was unable to demonstrate that the combination of ice and a defect in the sidewalk caused her to slip and fall, the Court ordered summary disposition in the defendant's favor. *Id.* at 310, 312. We are unable to distinguish *Haliw*. Plaintiff slipped on the ice that was allowed to accumulate because of the alleged drainage defect. Like the plaintiff in *Haliw*, plaintiff did not trip over the alleged drainage defect, and she did not lose her balance because of the alleged drainage defect. The sole proximate cause of plaintiff's slip and fall was the ice. Plaintiff has presented no evidence to suggest that anything other than the ice caused her to slip and fall. The alleged drainage defect is not a proximate cause of plaintiff's slip and fall simply because it caused an accumulation of ice.

The immunity of governmental agencies is broad, and exceptions are narrowly construed. *Haliw, supra* at 303. A government's failure to remove natural accumulations of snow and ice from a public highway does not constitute negligence. *Id.* at 305, 308. A plaintiff must prove that the roadway contained an existing defect that rendered it "not reasonably safe for public travel." *Id.* at 308. To satisfy this burden, a plaintiff must prove that the combination of the existing defect and the ice caused her to slip and fall. *Id.* at 309-311. As in *Haliw*, plaintiff in

the instant case has failed to show a persistent defect in the road that rendered it “unsafe for public travel at all times that, in combination with the ice, caused the incident.” *Id.* at 310.

Simply put, a plaintiff cannot recover in a claim against a governmental agency where the sole proximate cause of the slip and fall is the natural accumulation of ice or snow. This is true even where the ice or snow naturally accumulates in a portion of the highway (i.e., sidewalk) that was otherwise not “reasonably safe and convenient for public travel. . . .” *Hopson*[*v Detroit*, 235 Mich 248, 250;] 209 NW 161[(1926)]. Rather, there must exist the combination of the ice or snow and the defect that, in tandem, proximately causes the slip and fall. Thus, even if we accept plaintiff’s claim, in the present case, that a depression in the sidewalk allowed the ice to form and be present, we conclude that such a depression, under the facts here, did not render the sidewalk out of repair within the meaning of subsection 1402(1). [*Haliw*, *supra* at 311.]

Like the sidewalk depression in *Haliw*, the alleged lack of proper drainage in the instant case permitted the natural accumulation of ice and presented no other danger to pedestrians. *Id.* at 312. The alleged drainage defect was not a persistent defect that rendered the street unsafe for public travel at all times, and it did not render the street out of repair within the meaning of MCL 691.1402(1).

Plaintiff maintains that the policy concern about imposing too heavy a burden on cities by imposing liability for minor defects does not apply in the instant case because of the magnitude of the defect. However, it is not the province of this Court to make policy judgments. *Hanson v Mecosta Co Rd Comm*, 465 Mich 492, 501-502; 638 NW2d 396 (2002).

Lastly, plaintiff contends that summary disposition was inappropriate because there were genuine issues of material fact about whether there was a drainage defect in the road. In moving for summary disposition, defendant asserted that there was no drainage defect. We find this argument misplaced because it does not concern an issue of material fact. What is more germane to the discussion is whether the alleged drainage defect was a proximate cause of plaintiff’s slip and fall, as discussed above. Because we conclude that plaintiff failed to provide any evidence that the alleged defect was a proximate cause of her slip and fall, there is no genuine issue of material fact and summary disposition was appropriate.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder