

STATE OF MICHIGAN
COURT OF APPEALS

DONALD SMITH,

Plaintiff-Appellant,

v

CITY OF WARREN,

Defendant-Appellee.

UNPUBLISHED
February 23, 2006

No. 255004
Macomb Circuit Court
LC No. 2002-005544-NO

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiff appeals by right from the order granting defendant's motion for summary disposition. Plaintiff's action arose out of injuries he sustained after tripping and falling over a water shutoff valve located on a public sidewalk in Warren. Plaintiff based his claim on the sidewalk exception to governmental immunity, arguing that defendant failed to maintain the sidewalk in reasonable repair. We affirm.

Plaintiff argues that his claim falls within the highway exception to governmental immunity. We disagree. This Court reviews de novo a trial court's grant or denial of a motion for summary disposition. *Hawkins v Mercy Health Services, Inc*, 230 Mich App 315, 324; 583 NW2d 725 (1998). Defendant brought its motion for summary disposition under MCR 2.116(C)(7). MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties. *Glancy v Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). The applicability of governmental immunity is a question of law which is reviewed de novo on appeal. *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

It is well settled that the immunity conferred upon governmental agencies is broad, and the statutory exceptions are to be narrowly construed. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 155; 615 NW2d 702 (2000). The governmental immunity act, MCL 691.1401, provides that a governmental agency is immune from tort liability while engaging in a governmental function unless a specific exception applies. Five statutory exceptions to governmental immunity exist. *Id.* This appeal involves the highway exception to governmental immunity, MCL 691.1402(1). The highway exception to governmental immunity, MCL 691.1402(1), requires a governmental agency to maintain a highway under its jurisdiction in reasonable repair so that it is reasonably safe and convenient for public travel. The definition of "highway" includes sidewalks. MCL 691.1401(e). A discontinuity defect of less than two

inches creates a rebuttable inference that the municipality maintained the sidewalk in reasonable repair. MCL 691.1402a(2).

Plaintiff argues that the two-inch rule has traditionally only been applied to defects, holes, and gaps in sidewalks, but not to obstructions by foreign objects protruding from public sidewalks. However, given our Supreme Court's previous applications of the two-inch rule to obstructions protruding from sidewalks, plaintiff's argument lacks merit. See *Northrup v City of Pontiac*, 159 Mich 250; 123 NW 1107 (1909) (holding that an iron grating projecting two inches or less above a sidewalk was not as a matter of law an obstruction rendering the sidewalk not reasonably safe for public travel); *Baker v City of Detroit*, 166 Mich 597; 132 NW 462 (1911) (holding that where a woman tripped on an iron water shut-off circular box less than two inches high, the sidewalk was reasonably safe and fit for public travel when the obstruction or depression is less than two inches); and *Glancy, supra* at 580 (stating that previous cases had applied the rule to both depressions and obstructions).

In this case, all of the documentary evidence submitted by the parties shows that the protruding valve in the sidewalk was less than two inches. As the trial court properly noted, plaintiff offered no evidence that the valve was beyond two inches, thus, there is a rebuttable inference that defendant maintained the sidewalk in reasonable repair. Plaintiff failed to offer evidence to rebut this inference. Because plaintiff has failed to rebut the inference that defendant maintained the sidewalk in reasonable repair, the trial court properly granted defendant's motion for summary disposition pursuant to MCL 691.1402a(2).¹

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder

¹ Because plaintiff's claim did not fit within the highway exception to governmental immunity, we need not address the remaining issues.