

STATE OF MICHIGAN
COURT OF APPEALS

MARY E. CRAIG,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF
HISTORIES, ARTS & LIBRARIES,

Defendant-Appellant.

UNPUBLISHED

May 24, 2007

No. 273738

Ingham Circuit Court

LC No. 04-001741-NO

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(10) in this dispute arising out of a fall at the Michigan Library and Historical Center in Lansing. We affirm the denial of summary disposition to defendant; however, to the extent that the circuit court's opinion can be understood as granting summary disposition to plaintiff, it is vacated. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On October 6, 2003, plaintiff visited the Michigan Library and Historical Center. While descending a two-step stairway from the Lumber Baron's Era Exhibit, plaintiff tripped and fell to the floor level of the museum. Plaintiff injured her left knee and femur in the fall.

Plaintiff filed suit alleging negligence and invoking the public building exception to governmental immunity, MCL 691.1406. Defendant moved for summary disposition on the basis that the stairway in question was part of a removable exhibit and was not part of the building. The circuit court denied defendant's motion.

A circuit court's decision on a motion for summary disposition is reviewed de novo as a question of law. *Fane v Detroit Library Comm'n*, 465 Mich 68, 74; 631 NW2d 678 (2001). Summary disposition is proper under MCR 2.116(C)(7) when the law grants immunity and a claim is therefore barred. *Id.* A plaintiff can overcome such a motion for summary disposition by alleging facts that support the application of an exception to governmental immunity. *Id.*

While government agencies are generally immune from suit for actions taken in the performance of their governmental functions, there are some narrowly drawn exceptions to that immunity. MCL 691.1406, MCL 691.1407, *Fane, supra*, 465 Mich 74. One such exception is

the public building exception, which provides: “Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public.” MCL 691.1406. A five-prong test has been established to determine if the public building exception applies.

Under the test, a plaintiff is required to prove that (1) a governmental agency is involved, (2) the public building in question is open for use by members of the public, (3) a dangerous or defective condition of the public building itself exists, (4) the governmental agency had actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable period of time or failed to take action reasonably necessary to protect the public against the condition after a reasonable period. [*Fane, supra*, 465 Mich at 75.]

The third prong of this test—whether a dangerous or defective condition of the public building itself exists—is at issue in the present case.

To determine whether the stairway leading to the exhibit is “of” the building, it must be determined whether the building “possesses” the item. *Fane, supra*, 465 Mich 77. Therefore, the characteristics of both the exhibit and the building must be examined. *Id.* A fixture is something that can have an existence apart from the realty, but it is considered a fixture and part of the building if (1) it is annexed to realty, (2) its adaptation or application to the realty is appropriate, and (3) it is intended as a permanent accession to the realty. *Id.*

The evidence presented in this case included an affidavit of the museum’s director, pictures submitted by plaintiff showing the steps and front of the exhibit in question, and a report from a visual expert concerning the staircase. The museum director stated that the exhibit was not intended to be attached to the building, or to be a permanent part of the building. Further, the museum director stated that when the exhibit is eventually removed at some indeterminate time in the future, it would not damage or reduce the value of the building.

The report from the visual expert indicated that he inspected the stairs on May 31, 2006. The accident took place two-and-a-half years earlier on October 6, 2004. The photos submitted by plaintiff show the stairs at issue and only a portion of the exhibit. The evidence submitted below established that the exhibit and staircase were in place at least from October 6, 2004 to May 31, 2006.

We conclude that neither the photos plaintiff submitted nor the museum director’s conclusory affidavit is sufficient to enable a conclusion that the exhibit and/or the attached staircase either did, or did not, constitute a fixture as a matter of law. Accordingly, neither party was entitled to summary disposition.

We affirm the circuit court’s denial of summary disposition to defendant. To the extent the circuit court’s ruling can be understood as granting plaintiff summary disposition, it is vacated.

We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Henry William Saad

/s/ Christopher M. Murray