STATE OF MICHIGAN

COURT OF APPEALS

JERZINE BARR,

Plaintiff-Appellee,

v

HURON-CLINTON METROPOLITAN AUTHORITY and RANGER WROBEL,

Defendants-Appellants.

UNPUBLISHED
March 28, 1997

No. 177694
Wayne Circuit Court
LC No. 93-316853-NI

Before: Marilyn Kelly, P.J., and MacKenzie and J. R. Ernst*, JJ.

PER CURIAM.

Defendants appeal by leave granted from an order denying their motion for summary disposition. We reverse.

On August 22, 1992, plaintiff attended a family picnic at the Lower Huron Metro Park. At approximately 8:00 p.m., she went to the park's restroom. Plaintiff attempted to turn on the lights in the restroom, but was unable to do so because they were controlled by a switch that required a key. Plaintiff entered the restroom, which had three windows, and was injured when she slipped on an accumulation of liquid on the floor. This personal injury action followed.

Plaintiff's theory with regard to defendant Huron-Clinton Metropolitan Authority, the governmental agency that operated the park and its restroom, was that the key-activated light switch constituted a defect in a public building and thus came within the scope of the public building exception to governmental immunity, MCL 691.1406; MSA 3.996(106). Plaintiff's theory with regard to Ranger Wrobel, who apparently had access to the necessary key, was that his failure to turn on the lights constituted gross negligence and thus exposed him to liability under MCL 691.1407; MSA 3.996(107).

On appeal, defendants first claim that the trial court should have granted summary disposition in favor of the Authority because plaintiff failed to show a defect within the public building exception to

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* Circuit judge, sitting on the Court of Appeals by assignment.

governmental immunity. We agree. In enacting the public building exception, the Legislature intended to impose a duty to maintain safe public buildings, but not necessarily safety in public buildings. *Reardon v Dep't of Mental Health,* 430 Mich 398, 417; 424 NW2d 248 (1988). Thus, to come within the defective building exception, a plaintiff's injury must be occasioned by the dangerous or defective physical condition of the building itself. *Id.,* p 413; *Wade v Dep't of Corrections,* 439 Mich 158, 168; 483 NW2d 26 (1992). The statutory scheme does not contemplate transitory conditions because they are not related to the permanent structure or the physical integrity of the building. *Id*.

In *Reardon, supra,* the Supreme Court rejected a claim that the existence of a large number of master keys to a state-operated dormitory room contributed to the assault of a student in her room, and thus made the room dangerous or defective. In *Schafer v Ethridge,* 430 Mich 398; 424 NW2d 248 (1988), the companion case to *Reardon,* the Court rejected a claim that the sexual assault of a patient at a state-operated center for the developmentally disabled was the result of a defect in the layout and lighting of the wing where she was staying. In *Wade, supra,* the Court held that an accumulation of liquid on a cafeteria floor that caused the plaintiff to slip and fall did not constitute a defective condition of the building itself. In each of these cases, the determinative factor was that the dangerous condition giving rise to the plaintiff's injury was not caused by a dangerous or defective condition of the building itself, but by negligent supervision or negligent janitorial care. *Wade, supra,* p 169. See also *Hickey v Zezulka (On Resubmission),* 439 Mich 408; 487 NW2d 106 (1992) and *Jackson v Detroit,* 449 Mich 420; 537 NW2d 151 (1995) (where proper supervision would have offset any shortcomings in the configuration of a room, the public building exception does not apply).

In this case, there is no allegation that the key-activated light system was defective, that it did not operate as intended, or that plaintiff was injured by a part of the building itself. Rather, the claim is that the lighting system, which had not been activated by an employee of the Authority, should have been equipped with a switch operable without the assistance of an employee. As in *Wade,* however, this claim amounts to an allegation of negligent janitorial care in failing to activate the lights, and not a dangerous condition of the building itself. Any inadequacy in the lighting at the time plaintiff entered the restroom was a transitory condition involving safety in a building, and was unrelated to the physical integrity of the building.[1] Because plaintiff failed to present facts justifying application of the public building exception to governmental immunity, the trial court should have granted summary disposition in favor of the Authority pursuant to MCR 2.116(C)(7).

Defendants next claim the trial court should have granted summary disposition in favor of Ranger Wrobel because plaintiff failed to establish his gross negligence, and thus failed to overcome the individual immunity accorded governmental employees under MCL 691.1407; MSA 3.996(107). Again, we conclude that summary disposition should have been granted pursuant to MCR 2.116(C)(7).

MCL 691.1407(2)(c); MSA 3.996(107)(2)(c) provides immunity from tort liability when an employee's conduct does not amount to gross negligence and defines gross negligence as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Here, plaintiff's claim was that Wrobel was grossly negligent in failing to turn on the lights in the restroom before she entered it. Reasonable minds could not differ with regard to whether this omission amounted to gross

negligence. See *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). The restroom received sufficient natural light that artificial lighting was not necessary during the day. Wrobel testified that August 22 was a bright, warm day and that the headlights of his car were not on when he responded to plaintiff's accident. Wrobel's failure to turn on the lights before 8:00 p.m. provides no basis from which it could reasonably be determined that he acted so recklessly as to demonstrate a substantial lack of concern for whether an injury would result. Accordingly, the trial court should have granted summary disposition in his favor.

Reversed.

/s/ Barbara B. MacKenzie
/s/ J. Richard Ernst

[1] As such, this case is distinguishable from *Singerman v Municipal Service Bureau, Inc*, 211 Mich App 678; 536 NW2d 547 (1995), lv granted 11/20/96 ___ Mich ___; ___ NW2d ___ (1996). In *Singerman*, the lights in a hockey rink were operating when the plaintiff was struck by a puck, but because of an unspecified defect, the lights allegedly left one end of the rink slightly dark. In this case, on the other hand, there was no claim that the restroom lights were in operation and functioning improperly at the time plaintiff was injured. Rather, the claim was that the lights should have been turned on by park personnel or equipped with a switch that plaintiff could operate. The alleged dangerous condition was non-activation, a condition not inherent to the premises itself.