STATE OF MICHIGAN

COURT OF APPEALS

LETA BURKETT,

Plaintiff-Appellee,

v

FLINT HOUSING COMMISSION,

Defendant-Appellant,

and

CITY OF FLINT,

Defendant.

UNPUBLISHED
June 3, 1997

No. 191915
Genesee Circuit Court
LC No. 94-032760

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM.

In this personal injury action, defendant Flint Housing Commission (FHC) appeals by leave granted the trial court's order denying its motion for summary disposition.[1] We reverse.

Plaintiff was a resident of the River Park Apartments, a public housing facility located in Flint. She was injured when she slipped and fell on a concrete slab located on the grounds of the facility. In denying defendant FHC's motion for summary disposition, the trial court held that questions of fact existed regarding whether the operation of the housing facility was a proprietary function, whether the cement slab was a public highway for purposes of governmental immunity, whether the snow and ice upon which plaintiff fell constituted a natural accumulation, and whether the dangerous condition was open and obvious.

Defendant argues that it is immune from liability. We agree. MCL 691.1407(1); MSA 3.996(107)(1) provides that all governmental agencies shall be immune from tort liability where the agency is engaged in the exercise or discharge of a governmental function. A governmental function is

an activity "expressly or impliedly mandated or authorized by the constitution, statute local charter or ordinance, or other law." MCL 691.1401(f); MSA 3.996(101)(f). Unless the activity is proprietary in nature or falls within one of the other statutory exceptions to the governmental immunity act, a governmental agency is immune from tort liability if it engages in an activity which is expressly or impliedly authorized by law. *Ross v Consumers Power (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984).

The operation of low income housing projects by municipal housing commissions is expressly authorized by statute. MCL 125.651 *et seq.*; MSA 5.3011 *et seq.* Among the powers specifically conferred upon such commissions is the power "to lease and/or operate any housing project or projects." MCL 125.657(b); MSA 5.3017(b). Accordingly, we find that defendant's operation of the River Park Apartments constituted a governmental function.

In denying defendant's motion for summary disposition, the trial court held that a question of fact existed with regard to whether operation of the River Park facility constituted a proprietary function. We disagree. In order for an activity to be deemed a proprietary function, it must: (1) be conducted primarily for the purpose of producing a pecuniary profit; and (2) not normally be supported by taxes or fees. Whether an activity actually generates a profit is not dispositive, but the existence of profit is relevant to a determination of the governmental agency's intent. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 97; 494 NW2d 791 (1992).

The Municipal Housing Facilities Act (MHFA), MCL 125.677; MSA 5.3037, precludes municipal housing commissions from operating public housing projects for a profit. Moreover, defendant submitted the affidavit of its executive director, Reginald Richardson, who asserted that the FHC "does not operate to generate a profit and, in fact, does not profit from the rental of apartments to its residents." Plaintiff's argument that a question of fact existed regarding the proprietary function exception because residents of the facility pay rent to the FHC, and therefore the facility may operate "without the necessity of tax dollars," is without merit. An agency may conduct an activity on a self-sustaining basis without subjecting itself to the proprietary function exception. *Adam*, *supra* at 98. Based on MCL 125.677; MSA 5.3037 and the Richardson affidavit, we find that defendant was not engaged in the exercise of a proprietary function.

Plaintiff further contends that various provisions of the MHFA suggest a legislative intent to hold municipal housing commissions liable for personal injuries claims. In particular, plaintiff cites MCL 125.663; MSA 5.3023, which sets forth the procedure which must be followed in order for an individual to assert a claim against a governmental agency for injuries arising in connection with a public housing facility.

The MHFA was enacted in 1933 and has been amended only slightly since that time. The Governmental Immunity from Tort Liability Act (GTLA), MCL 691.1407 *et seq.*; MSA 3.996(107) *et seq.*, was first enacted in 1964. The GTLA underwent significant changes in 1986. As noted, the GTLA provides that all governmental agencies shall be immune from tort liability in all cases wherein the

agency is engaged in the exercise of a governmental function "[e]xcept as otherwise provided in this act." MCL 691.1407(1); MSA 3.996(107)(1).

The Legislature is presumed to be familiar with existing laws and to have considered the effect of new laws on all existing laws. *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993). Where it is clear that a statute conflicts with an earlier enacted provision, the

Legislature is deemed to have repealed the prior statute to the extent of the conflict. *Ballard v Ypsilanti Twp*, 216 Mich App 545, 550; 549 NW2d 885 (1996). Because the GTLA does not exclude claims brought pursuant to the MHFA, this Court must presume that the Legislature elected not to exclude the MHFA from its scope. Accordingly, plaintiff's reliance on the MHFA is without merit.

Next, defendant argues that no genuine issue of fact existed regarding the applicability of the public highway exception to immunity. We agree. The public highway exception, MCL 691.1402; MSA 3.996(102), is narrowly drawn. *Scheurman v Dep't of Transportation*, 434 Mich 619, 630; 456 NW2d 66 (1990). No action may be maintained unless it is clearly within the scope and meaning of the statute. *Id.* Highway is defined as "every public highway, road, and street which is open for public travel and shall include bridges, sidewalks, crosswalks, and culverts on any highway." MCL 691.1401(e); MSA 3.996(101)(e).

Plaintiff contends that the public highway exception is applicable in the instant case because the slab of concrete upon which she fell constituted a "sidewalk" for purposes of governmental immunity. Based on the photographs submitted by defendant in support of its motion for summary disposition, plaintiff's deposition testimony, and Richardson's affidavit, we disagree. Although one end of the concrete slab is adjacent to a sidewalk, the slab itself does not extend across the entire length of the grassy area. Thus, the slab does not appear to be a sidewalk in the generally understood meaning of the term. Richardson stated and plaintiff admitted that the concrete slab is used by residents for recreational activities. That residents of the complex also use the slab to walk between areas of the facility does not render it part of a highway open for public travel. See *Richardson v Warren Consolidated School Dist*, 197 Mich App 697, 704-705; 496 NW2d 380 (1992). Accordingly, the trial court erred in holding that an issue of fact existed regarding whether the cement slab was a public highway for purposes of governmental immunity.

Because we find that defendant is immune from liability, we do not need to address defendant's remaining issues.

Reversed. No taxable costs pursuant to MCR 7.219 because a question of public policy is involved.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Hilda R. Gage

[1] By stipulation of the parties, the city of Flint was dismissed from the action on December 20, 1994.