

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA DENISE HECTOR and KENNETH
HECTOR,

UNPUBLISHED
July 11, 1997

Plaintiffs-Appellants,

v

No. 193690
Court of Claims
LC No. 95-015979 CM

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Plaintiffs appeal by right summary disposition granted by the Court of Claims on grounds that their injuries did not arise from a situation within the highway exception to governmental immunity. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs incorrectly assert that the decision in *Chaney v Department of Transportation*, 447 Mich 145; 523 NW2d 762 (1994), is not precedential. We disagree. Although there was no majority opinion in the *Chaney* case, and the five Justice majority could not agree on a single rationale for decision, nonetheless a majority of the Supreme Court was in clear agreement that injuries such as those here presented, attributable to deficiencies in guardrails, curbs, or abutments outside the improved portion of the highway designed for vehicular travel, and not resulting in injury on the improved portion of the highway designed for vehicular travel, are outside the scope of the highway exception to governmental immunity and therefore tort liability actions seeking damages for such injuries are barred by governmental immunity. None of the five Justices constituting the majority in *Chaney* would have found liability under the facts of the present case, and therefore *Chaney* is precedential for this purpose. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996). Plaintiffs cannot blame any aspect of their injuries on a deficiency within the improved portion of the highway designed for vehicular travel; they left the roadway to avoid another, presumably negligent motorist, but a motorist is not part of the improved portion of the

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

highway designed for vehicular travel. *Wechsler v Wayne County Road Commission*, 215 Mich App 579, 584 n 2; 546 NW2d 690 (1996).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

/s/ Donald A. Teeple