

STATE OF MICHIGAN
COURT OF APPEALS

EMMA J. JOSEPH, as Personal Representative of the
Estate of TIAJUAN J. McCRANIE, Deceased,

UNPUBLISHED
August 15, 1997

Plaintiff-Appellant/Cross-Appellee,

v

No. 190950
Van Buren Circuit Court
LC No. 94-039370-NI

VAN BUREN COUNTY ROAD COMMISSION,

Defendant-Appellee/Cross-Appellant.

Before: Sawyer, P.J., and Neff and A. L. Garbrecht*, JJ.

PER CURIAM.

Plaintiff appeals, and defendant cross appeals, from an order of the circuit court granting summary disposition to defendant on plaintiff's wrongful death claim. We affirm in part, reverse in part and remand.

Plaintiff's decedent, a minor, was killed while riding in his grandmother's car in Van Buren County. The accident occurred when a vehicle traveling on a cross-street disregarded a stop sign, entering the intersection and colliding with decedent's grandmother's vehicle. Decedent died within a few days from injuries sustained in the accident.

The claim against defendant is premised on a theory that defendant failed to properly maintain the stop sign on the cross-street. Specifically, it is alleged that the other driver failed to heed the stop sign because she did not see the stop sign because it was bent and obscured by roadside vegetation. The trial court granted summary disposition because plaintiff did not give notice of the claim to defendant within 180 days of the accident, as required by MCL 691.1404(3); MSA 3.996(3).

Plaintiff argues on appeal that the trial court erred in concluding that the notice of claim was untimely. We need not address this question because the second part of this issue, whether defendant was prejudiced, is dispositive. Plaintiff also argues that, even if notice was untimely, the trial court erred in concluding that there was actual prejudice to defendant because of the lack of notice, despite the fact

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

that defendant had actual knowledge of the alleged defect. We agree. For the lack of notice to bar plaintiff's claim, defendant must demonstrate that the lack of notice actually prejudiced defendant. *Brown v Manistee Co Rd Comm*, 452 Mich 354, 367, n 18; 500 NW2d 215 (1996). Furthermore, the governmental agency cannot be prejudiced by actions taken by it, even unknowingly, before the expiration of the notice period. *Id.* at 360, n 11. In the case at bar, defendant removed and scrapped the allegedly defective stop sign before the notice period expired. Accordingly, it cannot claim prejudice from being unable to inspect the sign. Furthermore, although the vegetation was not removed until after the expiration of the notice period, but before the notice was actually given, defendant cannot claim prejudice because the replacement of the stop sign renders the condition of the vegetation meaningless. That is, even if defendant received notice after the stop sign was removed, but before the vegetation was trimmed (and before the notice period expired), the fact that the sign had been removed rendered impossible to determine the extent to which the untrimmed vegetation had obscured the previous, defective stop sign.

For the above reasons, we conclude that, even if notice was untimely, the trial court erred in concluding that defendant demonstrated that it had been actually prejudiced by the lack of notice.

Our conclusion above renders it unnecessary to consider plaintiff's remaining arguments, however it does require us to consider defendant's argument on cross appeal, namely that the trial court erred in denying its motion for summary disposition based upon governmental immunity. We begin by noting that the trial court did, in fact, err by ignoring binding precedent by this Court at the time the trial court decided the motion. The trial court declined to follow this Court's decision because leave had been granted and the trial court had a "sneaking suspicion" that the law would change to the contrary. The trial court correctly predicted that the law would change. However, the trial court was not free to ignore our prior decision. That decision was controlling authority until reversed or modified by the Supreme Court or a special panel of this Court. Administrative Order No. 1994-4. We admonish the trial court in the future to follow the law as it finds it, not as its "sneaking suspicions" leads it to believe the law will become.

Nevertheless, the law has changed and defendant is not entitled to the protections of governmental immunity in the case at bar. The highway exception to governmental immunity includes the duty to maintain the stop sign at issue in this case, including both the physical condition of the sign itself and any vegetation which might have obscured the sign. See *Pick v Szymczak*, 451 Mich 607, 622-624; 548 NW2d 603 (1996).

Affirmed in part and reversed in part. Remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Allen L. Garbrecht