

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DANFORD R. LOY, as Next Friend of RONALD  
LOY, a Minor,

UNPUBLISHED  
October 3, 1997

Plaintiff-Appellant,

v

No. 185676  
Macomb Circuit Court  
LC No. 91-002886

BOARD OF COUNTY ROAD COMMISSIONERS  
OF THE COUNTY OF MACOMB, a/k/a  
MACOMB COUNTY ROAD COMMISSION,

Defendant-Appellee,

and

BOARD OF COUNTY ROAD COMMISSIONERS  
OF THE COUNTY OF MACOMB, a/k/a  
MACOMB COUNTY ROAD COMMISSION,

Third-Party Plaintiff,

v

VINCENZO CESARIO and ROBIN CESARIO,

Third-Party Defendants.

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Before: Corrigan, P.J., and Taylor and D. A. Johnston\*, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant. We affirm.

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

Ronald Loy, a minor, sustained serious injuries when he was struck by a vehicle being driven by an intoxicated driver as Loy returned from retrieving a ball. A lawsuit was filed against defendant Road Commission alleging a violation of its statutory obligation to maintain a reasonably safe roadway as a result of failing to conduct traffic surveys and maintenance of an excessively high speed limit. MCL 691.1402(2); MSA 3.996(102)(2). It was further asserted that the excessive speed limit was a proximate cause of the accident. As the result of an interlocutory appeal, this Court remanded the case to the trial court for reconsideration of a motion for summary disposition that defendant had filed in light of *Mason v Wayne Co Board of Commissioners*, 447 Mich 130; 523 NW2d 791 (1994), modified 451 Mich 1236 (1996). Thereafter, the trial court granted defendant summary disposition pursuant to *Mason*.

In *Mason*, the Michigan Supreme Court explored the scope of the highway exception to governmental immunity. The Court recognized the existence of governmental immunity in the context of an accident between a pedestrian and a motor vehicle that had occurred on a crosswalk within "the improved portion of the highway designed for vehicular travel." As a result, the *Mason* Court concluded:

Pedestrians who trek upon Michigan highways must and do venture beyond the protective mandates of MCL 691.1402(1); MSA 3.996(102)(1). ...Pedestrians are situated differently than vehicular traffic. ...

This legislative line drawing is also explicable on the ground that expanding the right to sue past a certain point does not prevent accidents, and amounts to nothing more than an expanded obligation to pay. The Legislature may well have concluded that governmental liability for injuries to pedestrians crossing the street will not enhance vehicular safety. *Id.* at 137-138.

In addition, the Court noted that "[p]edestrians crossing outside crosswalks face the additional hurdle of comparative negligence." *Id.* at 136, n 5.

More recently, in *Suttles v Dep't of Transportation*, 216 Mich App 166, 171-172; 548 NW2d 671 (1996), leave granted 454 Mich 893 (1997), this Court stated that *Mason* was directed broadly toward the proposition that pedestrian accidents on highways generally fall outside the scope of the highway exception to governmental immunity. Applicable here is the following statement from *Suttles*:

It is hard to imagine that the Legislature would have accorded greater protection to jaywalking pedestrians on highways, walking outside of crosswalks, than is accorded to pedestrians walking within such crosswalks. *Id.* at 172.

*Mason* and *Suttles* indicate that pedestrians trekking on highways do so without the ability to claim a violation of the highway exception to governmental immunity. We further indicate that we find nothing in *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), which calls *Mason's* holding vis-à-vis pedestrians into question.

Affirmed.

/s/ Maura D. Corrigan  
/s/ Clifford W. Taylor  
/s/ Donald A. Johnston