

STATE OF MICHIGAN
COURT OF APPEALS

CLAUDA WYATT,

Plaintiff-Appellant,

v

JACKSON HOUSING COMMISSION,

Defendant-Appellee,

and

CITY OF JACKSON,

Defendant.

UNPUBLISHED
October 21, 1997

No. 196067
Jackson Circuit Court
LC No. 95-73586-NO

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant Jackson Housing Commission. We affirm.

Plaintiff filed the instant negligence action against defendant as a result of a slip and fall that occurred at Reed Manor, a low income housing facility owned and operated by defendant. In order to receive federal financial assistance for low income housing, defendant entered into a contract with the Department of Housing and Urban Development (HUD), entitled "Consolidated Annual Contribution Contract". Section 305 of the contract requires that defendant obtain liability insurance and "require[s] that each liability insurance policy prohibit the insurer from defending any tort claim on the ground of immunity of the Local Authority from suit." Defendant, however, filed a motion for summary disposition, pursuant to MCR 2.116(C)(7) and (8), alleging that a governmental agency is immune from tort liability when engaged in the exercise or discharge of a governmental function. The trial court granted defendant's motion.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition because defendant waived its ability to assert immunity as a defense by entering into the contract with

HUD, and that such a waiver is permitted by the housing facilities act (HFA), MCL 125.651 *et seq.*; MSA 5.3011 *et seq.* We disagree. A trial court's decision to grant a motion for summary disposition is reviewed de novo by this Court to determine if the defendant was entitled to judgment as a matter of law. *Citizens Ins Co v Bloomfield Twp*, 209 Mich App 484, 486; 532 NW2d 183 (1995). The trial court granted defendants' motions pursuant to MCR 2.116(C)(7). MCR 2.116(C)(7) requires that that all documentary evidence filed or submitted by the parties be considered to determine whether a claim is barred because of immunity granted by law. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). In order to successfully oppose a motion brought under MCR 2.116(C)(7), a plaintiff must allege facts that warrant application of an exception to governmental immunity. *Id.*, 163.

Plaintiff maintains that by entering into the contract, defendant waived the ability to assert governmental immunity as a defense. Governmental immunity may only be waived by an express statutory enactment or by necessary inference from a statute. *Anzaldua v Band*, 216 Mich App 561, 585; 550 NW2d 544 (1996). Here, the contract, standing alone, does not constitute an express statutory waiver; therefore, it does not preclude defendant from asserting governmental immunity as a defense. Plaintiff further claims, though, that provisions of the HFA, specifically MCL 125.696; MSA 5.3056 and MCL 125.698; MSA 5.3056(2), authorize defendant to covenant to waive its immunity. However, because the government tort liability act (GTLA), MCL 691.1407 *et seq.*; MSA 3.996(107) *et seq.*, was enacted subsequent to the HFA, provisions of the HFA cannot be construed as statutory authorization allowing defendant to waive the immunity provided in the GTLA. *Malcolm v East Detroit*, 437 Mich 132, 139; 468 NW2d 479 (1991); *Ballard v Ypsilanti Twp*, 216 Mich App 545, 549-550; 549 NW2d 885 (1996). Additionally, this Court will not, for public policy reasons, enforce the contract because defendant's failure to abide by the terms of the contract is an issue between defendant and HUD, and is irrelevant to the instant action because plaintiff is not a party to the contract and does not assert third-party beneficiary status.

Affirmed.

/s/ Richard Allen Griffin

/s/ Myron H. Wahls

/s/ Roman S. Gribbs