STATE OF MICHIGAN

COURT OF APPEALS

CHRISTY ANN CARTER,

Plaintiff-Appellee,

v

CHIPPEWA COUNTY ROAD COMMISSION,

Defendant-Appellant,

and

EASTERN U.P. SNOWMOBILE COUNCIL and MICHIGAN SNOWMOBILE ASSOCIATION,

Defendants.

UNPUBLISHED
October 28, 1997

No. 189467
Chippewa Circuit Court
LC No. 92-000204-NO

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant Road Commission ("defendant") appeals by leave granted from the trial court's order denying its motion for summary disposition on the basis of governmental immunity. We affirm.

On February 22, 1992, plaintiff was injured while driving her snowmobile on South Strongs Road in Chippewa County. Plaintiff alleged that South Strongs Road was both a county road and a snowmobile trail. After rounding a curve in the road, plaintiff collided with a three to four foot wall of ice and snow that allegedly had been created by defendant's snowplow operations. According to plaintiff, when the accident occurred the road was open to vehicle and snowmobile traffic and there were no warning signs posted regarding the wall of snow and ice.

In her complaint, plaintiff alleged that defendant breached its duty to her by (1) negligently failing to install signs or traffic control devices regarding the wall of snow and ice; (2) failing to keep the highway in reasonable repair and in a condition reasonably safe and fit for travel; (3) failing to instruct snow plow operators in proper and safe methods of plowing; (4) failing to post signs and/or traffic

control devices within a reasonable distance of the hazard to warn motorists of the danger; (5) creating the hazard; (6) failing to remove the hazard when it became known; and (7) failing to remove the hazard when it was created.

Defendant filed a motion for summary disposition, arguing that "there is no basis for a recovery against a governmental agency for failing to provide warnings [sic] signs of a danger in a highway, where the signs are located outside the improved portion of the highway designed for vehicular travel." At oral argument, defendant stated that its motion was based only on MCR 2.116(C)(8). The trial court denied the defendant's motion, finding that plaintiff provided more than mere allegations in support of her claim and that the facts could justify recovery.

The sole issue on appeal is whether the trial court erred in denying defendant's motion for summary disposition and concluding that defendant owed a duty to plaintiff to post signs or traffic control devices warning of the wall of snow and ice. We affirm the trial court's denial of defendant's motion for summary disposition.

This Court reviews de novo the trial court's decision regarding a motion for summary disposition. *Tranker v Figgie Int'l, Inc*, 221 Mich App 7, 11; 561 NW2d 397 (1997). A motion for summary disposition pursuant to MCR 2.116(C)(8), tests the legal basis of the claim. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380; 454 NW2d 373 (1997). Such a motion should be granted "if the claim is so manifestly unenforceable as a matter of law that no factual progression could possibly support recovery." *Id.* MCR 2.116(C)(8) motions are decided on consideration of only the pleadings, and all factual allegations contained in the complaint are accepted as true. *Id.*, 380-381.

Defendant argues that, because plaintiff's claim is based on defendant's alleged failure to install warning signs or other traffic devices alerting motorists of the snow and ice wall, plaintiff's claim does not fall within the highway exception to governmental immunity, MCL 691.1402(1); MSA 3.996(102), because such signs and traffic devices would be located "outside the improved portion of the highway designed for vehicular travel." We disagree.

In *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), our Supreme Court set forth the rule applicable in the instant case: "a duty is imposed on governmental agencies to provide traffic control devices or warning signs at, or in regard to, points of hazard affecting roadways within their jurisdiction." *Id.*, 624. The Court defined "point of hazard" as:

> any condition that directly affects vehicular travel on the improved portion of the roadway so that such travel is not reasonably safe. To be a point of hazard for purposes of the highway exception, the condition must be one that uniquely affects vehicular travel on the improved portion of the roadway, as opposed to a condition that generally affects the roadway and its surrounding environment. . . . [S]uch conditions need not be physically part of the roadbed itself. [*Id.*, 623.]

In her pleadings, plaintiff alleged that defendant had a duty to alert her, through traffic control devices or warning signs, to the condition created by the snow and ice wall. Accordingly, under *Pick*, based on plaintiff's allegations, providing that the snow and ice wall was a point of hazard, her claim is viable. The trial court properly denied defendant's motion for summary disposition.

In the alternative, defendant argues that the highway exception does not apply because plaintiff was not operating the snowmobile on a "highway" but was operating her snowmobile on a point beyond which South Strongs Road was closed. Defendant relies on *Grounds v Washtenaw Co Rd Comm'n*, 204 Mich App 453; 516 NW2d 87 (1994), which held that a governmental agency's duty to keep roads in good repair and fit for public travel may be suspended by closing a portion of the road while it is being improved or repaired. *Id.*, 456. In this case, the road was not under repair or improvement, but was simply not fully maintained during the winter. Furthermore, in *Grounds*, the road was clearly marked with signs saying it was closed. Here, plaintiff alleges that, immediately prior to colliding with the snow and ice wall, she was traveling on a portion of South Strongs Road that was open to vehicular traffic. In contrast to *Grounds*, there were no signs marking the road as closed. Defendant only placed a sign some miles away from where the wall of ice and snow was positioned saying the road was closed ahead, without placing any sign establishing where the closing actually began. Accordingly, the reasoning of *Grounds* does not defeat plaintiff's claim.

We also note *Montgomery v Dep't of Natural Resources*, 172 Mich App 718; 432 NW2d 414 (1988), in which this Court held that a snowmobile trail did not fall within the meaning of the public highway exception. However, in this case, plaintiff alleged that she was injured when, while operating her snowmobile on South Strongs Road, not a snowmobile trail, she came upon the wall of snow and ice.

Finally, defendant argues that it owed no duty to plaintiff because she was not operating a motor vehicle. Again, we disagree. This issue was addressed in *Montgomery*, where this Court concluded that a snowmobile fell within the definition of motor vehicle, because snowmobiles are "not propelled by human power." *Id.*, citing MCL 257.79; MSA 9.1879,[1] MCL 257.4; MSA 9.1804,[2] and *Roy v Dep't of Transportation*, 428 Mich 330, 340; 408 NW2d 783 (1987); see also *People v Rogers*, 438 Mich 602, 606; 475 NW2d 717 (1991)(Mallett, J); *Id.*, 614-615 (Brickley, J, concurring) (in a plurality opinion, our Supreme Court concluded that a snowmobile is a vehicle for purposes of the statute proscribing operating a vehicle under the influence of intoxicating liquor, MCL 257.625(5); MSA 9.2325(5)).

Considering only the pleadings and accepting all defendant's factual allegations as true, we are not convinced that plaintiff's claim is so manifestly unenforceable as a matter of law that no factual development could possibly justify recovery. We therefore conclude that the trial court did not err in denying defendant's motion for summary disposition.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Richard A. Bandstra

[1] Vehicle" is defined in this section of the Michigan vehicle code as "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices exclusively moved by human power . . . ." MCL 257.79; MSA 9.1879.

[2] This section of the Michigan vehicle code defines "bicycle." MCL 257.4; MSA 9.1804.