

STATE OF MICHIGAN
COURT OF APPEALS

LEE LERNER,

Plaintiff-Appellant,

v

PIERCE MIDDLE SCHOOL and WATERFORD
SCHOOL DISTRICT,

Defendants-Appellees.

UNPUBLISHED

September 25, 1998

No. 203061

Oakland Circuit Court

LC No. 96-534239 NO

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition on governmental immunity grounds. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when he walked into a pane of glass installed in a sidelight adjacent to a set of doors at the entry to Pierce Middle School. Plaintiff alleged that the glass had been missing for years, and that defendants' failure to make the new glass readily visible constituted a building defect, avoiding governmental immunity under MCL 691.1406; MSA 3.996(106). The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), stating that the allegations failed to show a dangerous or defective condition in the building itself.

When reviewing the grant of summary disposition on the ground that a claim is barred by governmental immunity, the Court must consider all documentary evidence submitted. *Codd v Wayne Co*, 210 Mich App 133, 134; 537 NW2d 453 (1995). "All well-pleaded allegations are accepted as true and construed in favor of the non-moving party. To survive a motion for summary disposition, the plaintiff must allege facts warranting the application of an exception to governmental immunity." *Id.* at 133-134.

MCL 691.1406; MSA 3.996(106) provides in part:

Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition.

The Legislature intended that the exception apply in cases where the physical condition of the building causes the injury. *Reardon v Dep't of Mental Health*, 430 Mich 398, 411; 424 NW2d 248 (1988). Whether the physical condition of a building is dangerous or defective must be determined in light of the uses for which the building was designed. *DeSanchez v Dep't of Mental Health*, 455 Mich 83, 91; 565 NW2d 358 (1997).

The trial court erred in granting summary disposition. The allegations, viewed in a light most favorable to the non-moving party, show that it would be reasonable for a person to walk into the sidelight, not knowing that clear glass was present. The trier of fact could conclude that it was reasonably necessary to take measures to make the glass visible to protect the public from the danger presented. Accepting plaintiff's allegations, as we must, there are sufficient facts presented to show that the public building exception may be applicable to his claim. *Codd, supra*.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh