

STATE OF MICHIGAN
COURT OF APPEALS

FRANCINE CULLARI de SANCHEZ and
STEVEN JASON, Co-Personal Representatives of
the Estate of THOMAS A. BALTUS, deceased,

UNPUBLISHED
June 30, 2000

Plaintiffs-Appellants,

v

DEPARTMENT OF MENTAL HEALTH,

No. 214318
Court of Claims
LC No. 84-009239

Defendant-Appellee.

Before: Fitzgerald, P.J., and Neff and Smolenski, JJ.

SMOLENSKI, J. (*dissenting*).

I respectfully dissent. I disagree with the majority that a genuine issue of material fact exists in this case, sufficient to reverse the lower court's grant of summary disposition to defendant under the public building exception to governmental immunity, MCL 691.1406; MSA 3.996(106).

I am unpersuaded by the majority's attempt to distinguish *Jackson v Detroit*, 449 Mich 420; 537 NW2d 151 (1995), from the present case. In *Jackson*, the decedent committed suicide by hanging himself from a noose tied to the exposed overhead bars of his jail cell. The plaintiff sued the City of Detroit, alleging that the exposed overhead bars constituted a dangerous or defective condition which triggered the public building exception to governmental immunity. Our Supreme Court held that the plaintiff's claim did not fall within the public building exception because it did not relate to the maintenance of a safe public building for the specific use and purpose for which it was assigned, but rather related to safety *in* buildings. *Id.* at 429.

To suggest that any physical feature of a jail cell, otherwise benign, that can conceivably become a part of a plan of one who is desperately driven to self destruction can become a "dangerous or defective condition" under the public building exception statute, simply crosses the outer limits of any reasonable reading of the intent of that statute when considered in the context of its history purpose, and wording. [*Id.*, quoting *Hickey v Zezulka (On Resubmission)*, 439 Mich 408, 426; 487 NW2d 106 (1992).]

I believe that the same can be said about an otherwise benign physical feature of a bathroom in a mental health facility, specifically on overhead dividing bar inside a toilet stall, such as the one decedent used to hang himself in the present case.

The majority attempts to distinguish *Jackson* by arguing that it involved a building designed as a holding cell for prisoners, while the present case involves a mental health facility designed to house mentally ill and potentially suicidal patients. As a result, the majority concludes that the bathroom in defendant's facility was dangerous and defective for its intended purposes, that is, for use by potentially suicidal mentally ill patients. However, *Jackson* also involved facilities used to house potentially suicidal persons. The *Jackson* opinion noted that eighty-six percent of suicide attempts in Detroit police lockups over a six-year period occurred in cells with exposed overhead bars. 449 Mich 424. Further, during the four-year period preceding the decedent's suicide, thirteen other suicide attempts had been made in the same precinct station where the decedent was housed. *Id.* Finally, the police officers in *Jackson* were on notice that the decedent was suicidal, and that he had already attempted to use the exposed overhead cell bars to hang himself. *Id.* at 423-424. Despite the use of the defendant's facility by suicidal persons and recurrent suicide deaths, the facility was not found to be dangerous or defective for its intended purposes. *Id.* at 429. I believe that this case falls squarely within the *Jackson* framework.

Because I believe that plaintiff's claim does not relate to the maintenance of a safe public building for the specific use and purpose for which it was assigned, but rather relates to safety *in* a public building, I would hold that the Court of Claims properly granted defendant's motion for summary disposition. No genuine issue of material fact exists in this case, regarding whether the bathroom in which decedent hanged himself was dangerous and defective for its intended purposes. I would therefore affirm.

/s/ Michael R. Smolenski