STATE OF MICHIGAN

COURT OF APPEALS

MARTHA SCHOENACH,

Plaintiff-Appellant,

v

ALLAN A. SMITH, JEFF IVES, DAVID DUNLAP, and MICHIGAN DEPARTMENT OF TRANSPORTATION,

Defendants-Appellees.

UNPUBLISHED
August 11, 2000

No. 219331
Jackson Circuit Court
LC No. 96-074778-NO

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action and a previous order granting the motion for summary disposition filed by defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The individual defendants, employees of the Jackson County Road Commission (JCRC), were operating tractor mowers in an area approximately two hundred feet from a traveled portion of I-94. The JCRC mowed the area pursuant to a contract with defendant Michigan Department of Transportation (MDOT). As plaintiff drove through the area an object broke her windshield, struck her on the shoulder, and exited the vehicle through the rear window. Plaintiff stated that the object was thrown over the roadway by one of the mowers. A witness stated that he did not see an object strike plaintiff's vehicle, and did not see an object thrown from the mowers.

Plaintiff filed suit against the JCRC and its employees in circuit court, and against MDOT in the Court of Claims. The cases were consolidated in circuit court. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (10). The trial court granted the JCRC's motion for summary disposition based on MCL 691.1402; MSA 3.996(102), the highway exception to governmental immunity, but denied the motion based on MCL 691.1405; MSA 3.996(105), the negligent operation of a motor vehicle exception to governmental immunity. The trial court granted MDOT's motion based on MCL 691.1402; MSA 3.996(102), and found that the individual defendants were entitled to summary disposition for the reason that plaintiff could not establish that an issue of fact

existed as to whether they acted in a grossly negligent manner. MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). The claims remaining against the JCRC were tried to a jury, which returned a verdict of no cause of action.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

MCL 691.1402(1); MSA 3.996(102)(1) provides in pertinent part:

> Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. …. The duty of the state and county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designated for vehicular travel and does not include sidewalks, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel….

A governmental agency is not liable for injury or damage caused by a defective highway unless the agency knew, or by the exercise of reasonable diligence should have known, of the defect and had a reasonable time to repair the defect. MCL 691.1403; MSA 3.996(103). Liability under the highway exception extends only to the traveled portion of a roadbed, paved or unpaved, that is actually designed for public vehicular travel, *Scheurman v Dep't of Transportation*, 434 Mich 619, 623; 456 NW2d 66 (1990), and to factors which are not physically within the improved portion of the roadway but which present points of hazard to reasonably safe vehicular travel. To be a point of hazard, a condition must uniquely affect vehicular travel on the improved portion of the roadway, as opposed to a condition that generally affects the roadway and the surrounding environment. *Pick v Szymczak*, 451 Mich 607, 623-624; 548 NW2d 603 (1996).

We affirm the judgment of no cause of action and the earlier order granting summary disposition in favor of MDOT and the individual defendants. Plaintiff does not assert that a defect existed in the surface of the roadway itself. Her position is that MDOT, through its agents the individual defendants, propelled an object onto the roadway, and thus failed to keep the roadway on which she traveled in a reasonably safe condition. Plaintiff's argument that the object was a point of hazard is without merit. Even assuming arguendo that the object that hit plaintiff's vehicle was thrown from one of the mowers operated by the individual defendants, the resulting dangerous condition was an isolated incident which could not be predicted and which defendant had no opportunity to correct. Such an object does not meet the definition of a point of hazard. *Id.*; MCL 691.1403; MSA 3.996(103). Cf. *Miller v Oakland County Road Comm*, 43 Mich App 215; 204 NW2d 141 (1972) (allegations that the defendant failed to remove dead trees from roadside notwithstanding actual knowledge that trees presented a hazard stated cause of action under highway exception).

Furthermore, plaintiff's reliance on MCL 257.676b(1); MSA 9.2376(2)(1), which prohibits the blocking of or interfering with the normal flow of traffic on a public highway, is misplaced. Even if one

of the mowers propelled the object that struck plaintiff's vehicle, the individual defendants did not place an object onto the roadway for the purpose of blocking or obstructing the normal flow of traffic.

Finally, plaintiff has not demonstrated the existence of a genuine issue of fact as to whether the individual defendants acted in a grossly negligent manner. Plaintiff points to no evidence which, taken in a light most favorable to her, could establish that the conduct of the individual defendants was "so reckless as to demonstrate a substantial lack of concern for whether an injury [resulted]." MCL 691.1407(2)(c); MSA 3.996(107)(2)(c).

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot