

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KANESIA PRYOR, Next Friend of ROBERT  
BELL, JR., a Minor,

UNPUBLISHED  
January 5, 2001

Plaintiff-Appellant,

v

PONTIAC HOUSING COMMISSION, INC.,

No. 217327  
Oakland Circuit Court  
LC No. 96-533865-NO

Defendant-Appellee.

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Before: Saad, P.J., and White and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We remand for further action.

Plaintiff's complaint asserted a claim for negligence and, at the summary disposition hearing, the trial court granted defendant's motion because defendant, a governmental entity engaged in a governmental function, is immune from plaintiff's negligence claims. MCL 691.1407; MSA 3.996(107). At oral argument, plaintiff conceded that summary disposition was properly granted on the negligence claim.

However, the record shows that at the summary disposition hearing plaintiff expressed a belief that the claim pleaded also sounded in contract and that if the court did not agree, then plaintiff desired to amend the complaint to add a breach of contract claim. The trial court failed to rule on this request. In plaintiff's brief on appeal, she asserts that she has a viable claim for breach of contract. Because the trial court failed to make any ruling regarding plaintiff's request to amend, this issue is premature for our review. Without a record, we are unable to determine whether sufficient grounds existed to deny plaintiff the opportunity to amend her complaint. See MCR 2.118(A)(2) (Leave to amend a pleading "shall be freely given when justice so requires."); *Knauff v Oscoda County Drain Com'r*, 240 Mich App 485, 493; 618 NW2d 1 (2000) ("The rules pertaining to amendment of pleadings are liberally construed and are designed to facilitate amendment except when prejudice would result to the opposing party."). Thus, we remand to the trial court to allow plaintiff to move to amend the complaint, for a ruling from the trial court, and for any necessary further action.

Remanded. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Helene N. White

/s/ Joel P. Hoekstra