

STATE OF MICHIGAN
COURT OF APPEALS

DAISY HORTON,

Plaintiff-Appellant,

v

CITY OF FLINT,

Defendant-Appellee,

and

SORENSEN GROSS CONSTRUCTION
COMPANY, WILL H. HALL & SON, INC. and
CHMP, INC.,

Defendants.

UNPUBLISHED

April 13, 2001

No. 220152

Genesee Circuit Court

LC No. 98-062137-NO

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting the city's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As plaintiff was entering city hall, she tripped over a mat that had been placed in the vestibule to absorb snow and slush that was tracked into the building. She fell forward into a glass door leading into the building itself. The glass shattered and plaintiff was cut. She filed this premises liability action for damages. The trial court dismissed the case, determining that the claim did not fall within the public building exception to governmental immunity.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews all the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant

* Circuit judge, sitting on the Court of Appeals by assignment.

to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery.” *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

The purpose of the exception to governmental immunity is “to impose a duty to maintain safe public buildings, not necessarily safety *in* public buildings.” *Reardon v Dep’t of Mental Health*, 430 Mich 398, 415; 424 NW2d 248 (1988) (emphasis in original). The “application of the public building exception is limited to injuries occasioned by a ‘dangerous or defective physical condition of the building itself’” and does not extend to “transitory conditions” such as an accumulation of a substance on a floor “because they are not related to the permanent structure or physical integrity of the building” itself. *Wade v Dep’t of Corrections*, 439 Mich 158, 168, 170; 483 NW2d 26 (1992). “Generally, the question of whether a part of a building is dangerous or defective must be determined in light of the use or purpose that part is intended to serve.” *Griffin v Detroit*, 178 Mich App 302, 306; 443 NW2d 406 (1989). “A public building may be dangerous or defective because of improper design, faulty construction, or absence of safety devices. However, a court should only look to the uses or activities for which the public building is assigned to determine if a dangerous or defective condition exists. Clearly, the question is not only whether the physical condition caused the injury incurred, but also whether the physical condition was dangerous or defective under the circumstances presented.” *Hickey v Zezulka (On Resubmission)*, 439 Mich 408, 422; 487 NW2d 106 (1992), amended 440 Mich 1203 (1992) (citations omitted).

The alleged defects that combined to cause plaintiff’s injury were the mat and the plate glass doors. The mat was used as a temporary safety measure in the winter months, it was not permanently affixed to the floor, and created a hazard only because someone failed to ensure that it lay flat on the floor and stayed in that position. That hazard was a transitory one arising from a want of daily maintenance and thus did not involve a defect in the building itself. *Bayn v Dep’t of Natural Resources*, 202 Mich App 66, 73; 507 NW2d 746 (1993). That the doors were constructed with plate glass rather than safety glass was a physical condition of the building itself. However, there is no evidence that the use of plate glass made them unfit or unsafe for their intended use. The doors were not in a state of disrepair, they worked properly, and they permitted safe ingress and egress when used in their intended manner. The plate glass door only presented a danger because it did not adequately protect persons who fell into it, a use for which it was not intended or designed. In other words, it presented a danger only if used in a manner other than “the normal uses and purposes for which the [door] was designed and assigned.” *Hickey, supra* at 427. Therefore, the trial court did not err in granting defendant’s motion for summary disposition.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard