STATE OF MICHIGAN

COURT OF APPEALS

KARL SCHEMER,

Plaintiff-Appellee,

v

LIVINGSTON COUNTY ROAD COMMISSION,

Defendant-Appellant.

UNPUBLISHED
November 2, 2001

No. 225360
Livingston Circuit Court
LC No. 99-017030-NO

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying its motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in a one-car accident when he swerved to avoid a small animal and struck a tree. Plaintiff brought this negligence and nuisance action, asserting that the tree was within the traveled portion of the roadway, and created an unreasonably dangerous condition. The trial court denied defendant's motion for summary disposition, and we granted defendant's application for leave to appeal.

MCL 691.1402(1) provides in part:

> [E]ach 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 the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel….

MCL 691.1401(e) provides:

> "Highway" means a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles.

The immunity conferred upon governmental agencies is broad, and the statutory exceptions thereto are to be narrowly construed. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000). MCL 691.1402(1) is a narrowly drawn exception to a broad grant of immunity, and there must be strict compliance with the conditions and restrictions of the statute. *Id.* *Nawrocki* overruled *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), which allowed liability for points of hazard that were physically not part of the roadbed. *Nawrock, supra* at 174-175, 180.

There are no facts that would support a finding that the tree was within the improved portion of the road designed for vehicular travel. *Gregg v State Hwy Dep't*, 435 Mich 307; 458 NW2d 619 (1990); *Goodrich v Kalamazoo*, 304 Mich 442; 8 NW2d 130 (1943). The trial court erred in denying summary disposition of the negligence count, on governmental immunity grounds.

The trespass nuisance claim also should have been dismissed. Trespass nuisance is an interference with the use of land caused by a physical intrusion that is set in motion by the government and results in personal or property damage. *Continental Paper & Supply Co, Inc v Detroit*, 451 Mich 162, 164; 545 NW2d 657 (1996). To establish a trespass nuisance, a plaintiff must show a trespass, caused by physical intrusion, which was caused or controlled by the government. *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139, 169; 422 NW2d 205 (1988).

Here, there was no trespass. The road and the shoulder were within the right-of-way controlled by defendant. There was no invasion onto land owned by plaintiff. The condition is not part of a cause of action that survived the passage of the governmental immunity act. *Id.* The trial court erred in denying summary disposition.

Reversed.

/s/ William C. Whitbeck
/s/ Janet T. Neff
/s/ Joel P. Hoekstra