

STATE OF MICHIGAN
COURT OF APPEALS

DAVID HARRIS,

Plaintiff-Appellant,

v

CITY OF DEARBORN,

Defendant-Appellee.

UNPUBLISHED

August 9, 2002

No. 232870

Wayne Circuit Court

LC No. 00-030069-NZ

Before: Talbot, P.J., and Cooper and D. P. Ryan*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was driving his truck on a street within defendant's municipal boundaries for the purpose of making a delivery to a residence when the top of his truck struck a tree branch extending some six feet over the roadway. A sign indicated that the truck route did not continue on that street. The collision resulted in personal injury to the plaintiff and damage to the plaintiff's truck.

Plaintiff filed suit alleging that defendant breached its duty by negligently failing to repair and maintain the highway so that it was reasonably safe for public travel. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that it was entitled to governmental immunity because the tree was located on a residential lawn and did not constitute a point of hazard, and because the roadway itself was reasonably repaired and maintained. The trial court granted defendant's motion. In reaching its decision the trial court relied on *Helmus v Dep't of Transportation*, 238 Mich App 250; 604 NW2d 793 (1999), which held that because the evidence failed to establish that the intersection constituted a point of hazard, the defendant could not be held liable on the ground that it could have taken steps to make the intersection safer. *Id.* at 253-255.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001).

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

Generally, a governmental agency is immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407. The term “governmental agency” includes a municipal corporation. *Cox v Dearborn Heights*, 210 Mich App 389, 392; 534 NW2d 135 (1995). There are several narrowly drawn exceptions to governmental immunity, including the highway exception. This exception requires a governmental agency having jurisdiction over a highway to “maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1402(1). The definition of “highway” does not include trees. MCL 691.1401(e). MCL 691.1402 imposes duties and liability on state and county road commissions only for the improved portion of the highway. This limitation does not apply to municipalities. *Haliw v Sterling Heights*, 464 Mich 297, 303; 627 NW2d 581 (2001).

In *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), our Supreme Court held that the duty to maintain a highway in reasonable repair included the duty to erect warning signs or traffic control devices at a “point of hazard” or a “point of special danger.” A “point of hazard” or a “point of special danger” was deemed to be a condition that directly affected vehicular travel on the improved portion of the roadway so that the travel was not reasonably safe. *Id.*, 621. *Pick, supra*, was overruled in *Nawrocki v Macomb County Rd Comm’n*, 463 Mich 143, 179-184; 615 NW2d 702 (2000), when our Supreme Court held that the highway exception did not contemplate conditions arising from points of hazard or special danger outside the actual roadbed designed for vehicular travel.

In *Weakley v Dearborn Heights (On Remand)*, 246 Mich App 322; 632 NW2d 177 (2001), the plaintiff sustained injuries when he tripped in an area of sidewalk that had been removed by the defendant for repair. The plaintiff alleged that the defendant breached its duty to keep the sidewalks in reasonable repair, and that the defendant should have erected barriers or warning signs. *Id.* at 324. Initially, this Court reversed the trial court’s grant of summary disposition with respect to the claim that the defendant breached its statutory duty. This Court relied on *Pick, supra*, and concluded that a municipality had the duty to erect barriers or warning signs at points of hazard affecting a sidewalk.¹ Our Supreme Court remanded the case for reconsideration in light of *Nawrocki, supra*. On remand, this Court affirmed the grant of summary disposition in favor of the defendant, holding that in light of *Nawrocki, supra*, the defendant did not have a duty to erect a barrier or a warning device around that portion of the sidewalk that was under repair. *Weakley, supra* at 328. The duty to repair and maintain a highway does not include a separate duty to keep the highway reasonably safe. *Id.* at 327.

Nawrocki, supra, and the remand decision in *Weakley, supra*, stand for the proposition that the concept of a point of hazard or special danger is no longer viable in the consideration of the liability of any governmental agency under the highway exception, including a municipality. Even assuming arguendo, as does plaintiff, that the point of hazard or special danger concept remains viable as to a municipality, the trial court’s decision must be affirmed. The evidence showed that the limb that struck plaintiff’s truck simply hung over the road. It was not severed and hanging precariously over the road, as was the limb at issue in *McKeen v Tisch (On Remand)*, 223 Mich App 721; 567 NW2d 487 (1997), on which plaintiff relies.

¹ *Weakley v Dearborn Heights*, 240 Mich App 382, 387-388; 612 NW2d 428 (2000).

In contrast to the facts of *McKeen, supra*, no evidence showed that defendant had any knowledge of the position of the limb. Further, no evidence established that defendant failed to maintain the highway in reasonable repair so that it was reasonably safe for public travel. MCL 691.1402(1). Defendant had no separate duty to take steps, such as removing the limb or erecting warning signs, to make the highway safer. *Weakley, supra* at 327.

Affirmed.

/s/ Michael J. Talbot

/s/ Jessica R. Cooper

/s/ Daniel P. Ryan