

STATE OF MICHIGAN  
COURT OF APPEALS

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JAMES HUGHEY, personal representative of the  
Estate of JOAN MARIE HUGHEY, deceased, and  
DIAN LOCKARD,

UNPUBLISHED  
November 19, 2002

Plaintiffs-Appellants,

v

OTTAWA COUNTY ROAD COMMISSION and  
KENT COUNTY ROAD COMMISSION,

No. 231147  
Kent Circuit Court  
LC No. 00-00394-NI

Defendants-Appellees.

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Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

This lawsuit arises from a multiple-fatality automobile accident at the intersection of Ottawa and Kent Counties along Gooding/Thirteen Mile Road and Kenowa Road. Plaintiffs assert negligence claims within the highway exception to governmental immunity, contending that defendants breached a statutory duty to keep the roads in reasonable repair and reasonably safe for public travel. MCL 691.1402(1). Defendants claimed governmental immunity pursuant to MCL 691.1407. The trial court granted summary disposition for defendants, concluding that plaintiffs' claims were barred by governmental immunity under *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143; 615 NW2d 702 (2002). Preliminarily, we held this matter in abeyance pending this Court's resolution of whether *Nawrocki*, *supra*, should be applied retrospectively. This Court having concluded that *Nawrocki* does apply retroactively, *Adams v Dep't of Transportation*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 230268, issued 10/11/02), lv pending \_\_\_ Mich \_\_\_ (Docket No. 122649), we now must determine whether the trial court's reliance on *Nawrocki* to dismiss plaintiffs' cause of action was proper. We conclude the trial court properly applied *Nawrocki* to the instant case. We affirm.

Matters of statutory interpretation are questions of law that are reviewed de novo. *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 739; 641 NW2d 567 (2002). Similarly, we review a trial court's ruling on a motion for summary disposition de novo. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). Defendants' motion was premised on MCR 2.116 (C)(7), barring claims because of immunity granted by law, and MCR 2.116(C)(8), providing for dismissal where the party opposing the motion has failed to state a claim on which relief may be granted. Motions based on MCR 2.116 (C)(7) may be supported by documentary evidence outside of the pleadings. However, only the pleadings may be considered in evaluating

a motion for summary disposition under MCR 2.116 (C)(8). MCR 2.116(G)(5); *Beaudrie, supra* at 129. A motion attacking the pleadings should only be granted if no factual development could possibly justify recovery and the defendant is entitled to judgment as a matter of law. *Id.* at 130.

Plaintiffs contend that the highway exception to the governmental immunity statute applies to claims premised upon a failure to make repairs to the surface of the roads. Plaintiffs allege that defendants failed to make repairs to the surface of the roads by neglecting to incorporate “rumble strips, raised pavement markers, words, crossbars or striping directly on the traveled portion of the roadbed.” (Plaintiff’s brief on appeal, p 6.)

Plaintiffs have correctly interpreted defendants’ statutory duty. See MCL 691.1402(1) (imposing upon defendants a duty to maintain in reasonable repair the portion of the highway designed for vehicular travel). Nonetheless, plaintiffs’ complaint is insufficient as a matter of law because it fails to allege facts, which, if established, would constitute a breach of the above, cited statutory duty.

When reviewing matters of statutory construction, our primary purpose is to discern and give effect to the Legislature’s intent. *Peters v Gunnell, Inc.*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket Nos. 230721 and 231661, issued 9/27/02), slip op at 3. In determining the Legislature’s intent, we first examine the specific language of the statute. *Robertson, supra* at 748. The Legislature is presumed to have intended the meaning it has plainly expressed and judicial construction is not permitted if the expressed language is clear. *Peters, supra*, slip op at 3. MCL 691.1402(1) expressly imposes upon state and county road commissions a duty “to *repair* and *maintain* highways . . . .” (Emphasis added.) The Legislature did not define these words. Thus, we must give these words their ordinary and common meaning. *Robertson, supra* at 748. “Repair” means “to restore to a good or sound condition *after decay or damage*; mend.” *Random House Webster’s College Dictionary* (1997), p 1101 (emphasis added). “Maintain” means “to keep in existence or continuance; preserve.” *Id.* at 792; See *Hanson v Mecosta Co Rd Comm’rs*, 465 Mich 492, 502; 638 NW2d 396 (2002). Based upon these definitions, we conclude that defendants were under a duty to keep the highways under their jurisdiction free from unreasonable decay and damage. Nothing in the highway exception to governmental immunity supports imposition of a duty to alter or improve the design of the highway, even if it is alleged that such alterations would make the highway safer for public travel. Our conclusion is supported by *Nawrocki*, wherein the Supreme Court recognized that governmental units do not have a common law duty to alter or modify the design of a roadway to make it safer:

While a particular decision to “improve,” “augment,” or “expand” a highway may be prudent and advisable, the decision nevertheless is for persons entrusted with the expenditure of taxpayer resources, not the courts. [*Nawrocki, supra* at 179 n 35, quoting *Wechsler v Wayne Co Rd Comm*, 215 Mich App 579, 588 n 4; 546 NW2d 690 (1996), remanded 455 Mich 863 (1997).]

Here, plaintiffs are correct that their allegations go directly to the traveled portion of the roadbed. However, plaintiffs fail to allege facts to support the conclusion that defendants neglected to repair damage or decay to the surface of the traveled portion of the highway. Instead, plaintiffs merely allege that defendants should have made upgrades or improvements to the design of the road by installing safety features, such as rumblestrips or extra signs, to the road surface. These allegations are insufficient as a matter of law.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra