STATE OF MICHIGAN

COURT OF APPEALS

LILLIAN HASSEN and RAYMOND HASSEN,

Plaintiffs-Appellants,

v

CITY OF OAK PARK,

Defendant-Appellee,

and

FRYDA FLEISH and AVRUM FLEISH,

Defendants.

UNPUBLISHED
November 26, 2002

No. 238113
Oakland Circuit Court
LC No. 99-018011-NO

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Plaintiffs appeal by right the order dismissing this nuisance action after the court granted defendant city's motion for summary disposition under MCR 2.116(C)(8). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After plaintiff Lillian Hassen tripped on a gap in a sidewalk, she brought this nuisance action against the city. The trial court granted summary disposition, finding that the claims were barred by governmental immunity.

A motion for summary disposition under MCR 2.116(C)(8) tests the legal basis for the complaint, and is decided on the pleadings. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380; 563 NW2d 23 (1997). The motion is granted if the claim is so clearly unenforceable as a matter of law that no factual development could support recovery. *Id.* This Court will review a decision to grant summary disposition de novo. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 59; 631 NW2d 686 (2001).

This Court has found that it remains unclear whether a nuisance per se exception to governmental immunity exists in Michigan. *Haaksma v Grand Rapids*, 247 Mich App 44, 56; 634 NW2d 390 (2001). A nuisance per se is an activity or condition that constitutes a nuisance at all times and under all circumstances, without regard to the care with which it is conducted or maintained. *Li v Feldt (After Second Remand)*, 439 Mich 457, 476-477; 487 NW2d 127 (1992).

A sidewalk, like an outdoor light, serves an important public purpose. Without regard to the care with which it is maintained, it is not an intrinsically unreasonable or dangerous activity; consequently, it cannot constitute a nuisance per se. *Haaksma, supra.* A defective sidewalk does not constitute a trespass-nuisance where there was no physical intrusion by the government interfering with plaintiffs' use of their land. *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139, 169; 422 NW2d 205 (1988), overruled on other grounds *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002).

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski