STATE OF MICHIGAN

COURT OF APPEALS

DANIEL DENNIS,

Plaintiff-Appellant,

v

CITY OF EASTPOINTE,

Defendant-Appellee.

UNPUBLISHED
December 27, 2002

No. 237521
Macomb Circuit Court
LC No. 00-005008-NI

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of defendant's motion for summary disposition pursuant to MCL 2.116(C)(7) in this slip and fall case involving snow-covered ice laying atop a municipal sidewalk. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the trial court erred in finding that plaintiff's claim was barred by governmental immunity and in its decision that the highway exception, MCL 691.1402(1), is inapplicable under the facts of the instant case. We disagree.

In *Haliw v Sterling Heights*, 464 Mich 297; 627 NW2d 581 (2001), our Supreme Court reaffirmed the "well-settled" principle that governmental agencies, while engaging in governmental functions, are immune from tort liability absent a specific exception. *Id*., 302. The highway exception, MCL 691.1402(1), provides in pertinent 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. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency.

For purposes of the statute, the term "highway" includes public sidewalks. MCL 691.1401(e). According to MCL 691.1402(1), the duty imposed upon a municipality is to "maintain" sidewalks "in reasonable repair and in a condition reasonably safe and fit for travel." Thus, a plaintiff cannot recover under this exception unless he can show that his injury was

caused by a combination of an actual defect in the sidewalk coupled with the accumulation of ice and snow. *Id*., 310. Reaffirming the analysis in *Hopson v Detroit*, 235 Mich 248; 209 NW 161 (1926), the *Haliw* Court held:

> Simply put, a plaintiff cannot recover in a claim against a governmental agency where the sole proximate cause of the slip and fall is the natural accumulation of ice or snow. This is true even where the ice or snow naturally accumulates in a portion of the [sidewalk] that was otherwise not 'reasonably safe and convenient for public travel.' *Hopson*, *supra* at 250. Rather, there must exist the combination of the ice or snow and the defect that, in tandem, proximately causes the slip and fall. [*Haliw*, *supra* at 311].

In addition, "[t]his other defect, however, is not a proximate cause within the meaning of this rule, simply because it causes the accumulation of the ice or snow." *Hopson*, *supra* at 252; see, also, *Haliw*, *supra* at 308, n 9. Moreover, this analysis does not depend on the cause of the depression that allows the accumulation of ice or snow. *Haliw*, *supra* at 307; *Hopson*, *supra* at 251. In short:

> In the absence of a persistent defect in the highway (i.e., a sidewalk), *rendering it unsafe for public travel at all times*, and which combines with the natural accumulation of ice or snow to proximately cause injury, a plaintiff cannot prevail against an otherwise immune municipality. [*Haliw*, *supra* at 312](emphasis added).

In the instant case, the trial court did not err in granting defendant's motion for summary disposition. The evidence plaintiff submitted did not establish that the sidewalk where plaintiff fell was cracked or broken, nor did it indicate a height differential between the slabs where plaintiff fell. A number of additional facts are undisputed, at least for the purposes of defendant's motion for summary disposition. They agree that defendant is the party responsible for the condition of the sidewalk. In addition, plaintiff testified that he did not trip, stumble or fall on the sidewalk and that the sidewalk appeared completely flat when he examined it. The parties do not dispute that the ice was caused by the melting and refreezing of water from a natural source rather than from another source. Rather, plaintiff argues, and defendant accepts, that the accumulation was caused by a combination of sidewalk slope and an abutting grass berm that was elevated above the level of the sidewalk. This condition allowed water to pond and freeze.[1]

The facts contained in the record establish that, although the sidewalk permitted the accumulation of ice, as a factual matter, "no other danger to the steps of the traveler than that arising from the presence of the ice . . . ." existed. *Id*., 312, citing *Hopson*, *supra* at 252. Thus, after considering the documentary evidence presented in a light most favorable to plaintiff, *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 7; 614 NW2d 169 (2000), we hold that the

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[1] According to plaintiff, the sidewalk was originally sloped so as to accommodate a driveway to an adjacent property. When the driveway was removed, the slope of the sidewalk was not altered prior to the addition of the grass berm.

trial court did not err in granting summary disposition to defendant pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh