

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

LAYUNIES MCCAIN,

Plaintiff/Counter Defendant-  
Appellee,

v

CITY OF DETROIT,

Defendant-Appellant,

and

TRAVELERS INDEMNITY COMPANY,

Defendant/Counter Plaintiff,

and

SHERRY MARTIN,

Defendant.

---

UNPUBLISHED

March 30, 2004

No. 245953

Wayne Circuit Court

LC No. 02-231349-NI

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant City of Detroit appeals as of right from a circuit court order denying its motion for summary disposition premised on governmental immunity. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

Plaintiff and defendant Martin were involved in an accident at the intersection of Kendall and Trinity in Detroit. Plaintiff asserted, and the trial court agreed, that defendant was liable under the highway exception to governmental immunity, MCL 691.1402 and MCL 691.1402a, because it failed to install and maintain traffic control devices at the intersection.

**II. STANDARD OF REVIEW**

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

### III. ANALYSIS

Except as provided in section 2a, a governmental agency having jurisdiction over a highway is liable in tort for breach of the duty to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). Section 2a provides in part that a municipality does not have a duty to maintain a portion of a county highway outside of the improved portion of the highway designed for vehicular travel unless it had at notice of the defect and the defect is a proximate cause of the plaintiff's injury. MCL 691.1402a(1).

An action may not be maintained under the highway exception unless it is clearly within the scope and meaning of MCL 691.1402(1). *Weaver v Detroit*, 252 Mich App 239, 245; 651 NW2d 482 (2002). The highway exception creates a duty to maintain a "highway." MCL 691.1402(1). Liability for the failure to maintain a highway exists only if the defect complained of is "actually and specifically included in the" statutory definition of "highway." *Ridley v Detroit (On Second Remand)*, 258 Mich App 511, 515; \_\_\_ NW2d \_\_\_ (2003). A highway is defined as "a public highway, road, or street that is open for public travel and includes bridges, sidewalks, railways, crosswalks, and culverts on the highway" but not alleys, trees, or utility poles. MCL 691.1401(e). Because traffic control devices are not part of the "highway" as that term is defined by statute, municipalities do not have a duty to install and maintain such devices under the highway exception. *Carr v Lansing*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2003), slip op at 6. MCL 691.1402a(1), which applies only to county highways, "creates no liability for municipalities that would not otherwise exist" under MCL 691.1402(1). Our analysis of the case currently before this Court is consistent with the decision reached in the case of *In re Marchyok*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2004), slip op at 5. Accordingly, we conclude that the trial court erred in denying defendant's motion for summary disposition.

Reversed.

/s/ Brian K. Zahra  
/s/ Henry William Saad  
/s/ Bill Schuette