

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF STEPHANIE SHANK,

Plaintiff-Appellant,

v

NICOLE MARIE SECOND, a/k/a NICOLE
MARIE SOBICK, EDWARD JAMES SKURDA,
and JEFF SKURDA,

Defendants

CITY OF STERLING HEIGHTS and MICHIGAN
DEPARTMENT OF TRANSPORTATION,

Defendants-Appellees.

UNPUBLISHED

May 20, 2004

No. 245314

Macomb Circuit Court

LC No. 2001-000048-NI

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendants' motions for summary disposition. We affirm.

Plaintiff's contention that the highway exception to governmental immunity applies is without merit. See *Nawrocki v Macomb County Rd Comm*, 463 Mich 143, 180; 615 NW2d 702 (2000); *Carr v City of Lansing*, 259 Mich App 376, 380-381; 674 NW2d 168 (2003).¹ Furthermore, the highway exception does not extend to claims based on defective design. *Hanson v Mecosta County Rd Comm*, 465 Mich 492, 502; 638 NW2d 396 (2002). Plaintiff's characterization of the condition of the highway as falling within the governmental immunity exception does not preclude summary disposition. We are not bound by a party's label of the cause of action because to do so is to exalt form over substance. *Johnston v City of Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). Plaintiff's reliance on the affidavit of an expert is

¹ See also *In re Marchyok Estate*, ___ Mich App ___, ___ NW2d ___ (2004) (Docket No. 242409), but compare with *Johnson-McIntosh v City of Detroit*, ___ Mich App ___, ___ NW2d ___ (2004) (Docket No. 244349).

also without merit. The duty to interpret and apply the law is allocated to the courts, not the parties' expert witnesses. *Hottman v Hottman*, 226 Mich App 171, 179; 572 NW2d 259 (1997).²

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Karen M. Fort Hood

² Based on our resolution of this case, we need not decide defendants' dispute regarding the impact of their contract on jurisdiction and the trial court's sua sponte decision regarding proximate cause. We may affirm the trial court where it reaches the correct result, albeit for the wrong reason. *Kenyon v Second Precinct Lounge*, 177 Mich App 492, 505 n 3; 442 NW2d 696 (1989).