

STATE OF MICHIGAN
COURT OF APPEALS

CARLA CRITES and SCOTT CRITES,

Plaintiffs-Appellants,

v

CITY OF OWOSSO,

Defendant-Appellee.

UNPUBLISHED

June 17, 2004

No. 245999

Shiawassee Circuit Court

LC No. 01-006072-NO

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

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Carla Crites sustained injuries when she tripped on a brick inlay in a section of sidewalk located in front of a fabric store in Owosso. Plaintiffs filed suit alleging that the sidewalk was defective, and that defendant had notice of the defective condition for more than thirty days prior to the incident. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10), finding that defendant was entitled to the benefit of the two-inch rule, MCL 691.1402a(2), and that no evidence showed that defendant had actual or constructive notice of the condition.

We review a trial court's decision on a motion for summary disposition *de novo*. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The governmental immunity act, MCL 691.1401 *et seq.*, provides that a governmental agency is immune from tort liability while engaging in a governmental function unless a specific exception applies. The highway exception to governmental immunity, MCL 691.1402(1), requires a governmental agency to maintain a highway under its jurisdiction in reasonable repair so that it is reasonably safe and convenient for public travel. The definition of "highway" includes sidewalks. MCL 691.1401(e).

A municipality has no duty to repair or maintain, and is not liable for an injury arising from, a sidewalk unless at least thirty days prior to the injury the municipality knew or in the exercise of reasonable diligence should have known of a defect in the sidewalk that proximately caused the injury. MCL 691.1402a(1). A discontinuity defect of less than two inches creates a

rebuttable inference that the municipality maintained the sidewalk in reasonable repair. MCL 691.1402a(2).

A municipality is not liable for an injury caused by a defective sidewalk unless the municipality knew or in the exercise of reasonable diligence should have known of the existence of the defect and had a reasonable time to repair the defect before the injury occurred. Knowledge of the defect and time to repair it are conclusively presumed if the defect existed so as to be readily apparent to an ordinarily observant person for a period of thirty days or longer before the injury occurred. MCL 691.1403.

The two-inch rule applies to causes of action arising on or after December 21, 1999. The cause of action in the instant case arose on March 25, 1999; therefore, the trial court erred by relying on the rule as a basis for granting summary disposition for defendant. Nevertheless, we affirm on the ground that the trial court correctly determined that no evidence showed that defendant had actual or constructive notice of a defect in the brick inlay. Prior to the incident, defendant had not received a report of an alleged defect in the inlay in that particular location. Employees of the fabric store indicated that they knew other persons had stumbled over the inlay at unknown times, but no employee was aware that defendant had been contacted regarding the condition. Carla Crites testified that she was a regular customer of the store, but that she never noticed the condition of the inlay prior to her fall. Defendant's engineer inspected the inlay, and determined that no brick was displaced more than one-half inch. No evidence created a question of fact as to whether defendant had actual or constructive notice of the alleged defect. MCL 691.1403; cf. *McKeen v Tisch (On Remand)*, 223 Mich App 721, 725-726; 567 NW2d 487 (1997). The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray