

STATE OF MICHIGAN  
COURT OF APPEALS

---

VICTOR J. BARTOLO,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

---

UNPUBLISHED

June 22, 2004

No. 244571

Wayne Circuit Court

LC No. 00-009360-NO

Before: Saad, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted from the trial court's order that granted summary disposition in favor of defendant, and we affirm.

Plaintiff alleges that he was injured when he fell on an elevated walkway along the Lodge Freeway in Detroit, which lead to a pedestrian bridge crossing over the freeway. He seeks to hold defendant liable for his injuries under the highway exception to governmental immunity, MCL 691.1402. Below, the parties disputed whether the walkway where plaintiff fell properly may be characterized as a sidewalk for purposes of the highway exception. The trial court granted defendant's motion for summary disposition, but not because the walkway was not a "sidewalk" under the highway exception to governmental immunity. Rather, the trial court held that regardless of how the walkway is characterized, the walkway was not within defendant's jurisdiction and therefore granted summary disposition in favor of defendant.

We review the trial court's decision de novo to determine if defendant was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Governmental immunity is a characteristic of government that prevents the imposition of tort liability. *Mack v Detroit*, 467 Mich 186, 203; 649 NW2d 47 (2002). A party that sues a governmental unit must plead facts in avoidance of immunity. *Id.* Because plaintiff pleaded facts in reliance on the highway exception to governmental immunity, MCL 691.1402(1), and because the trial court considered evidence outside the pleadings in deciding defendant's motion, we review the court's decision under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests whether there is factual support for the claim. *Maiden, supra* at 120. If the admissible evidence does not establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.*

We agree with defendant that the trial court's decision may be affirmed on the ground that the walkway where plaintiff fell is not a sidewalk for purposes of the highway exception. An appellee properly may argue alternative grounds for affirming a judgment in its favor that were rejected by the trial court. *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994). When the trial court has reached the correct result, we will affirm that result even if we do so "under alternative reasoning." *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 136-137; 676 NW2d 633 (2003).

The highway exception is to be narrowly construed, and this Court looks first to the plain language of the statute to discern and give effect to the Legislature's intent. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158-159; 615 NW2d 702 (2000). For purposes of the highway exception, the term "highway" is defined to include "sidewalks . . . on any highway." MCL 691.1401(e) (emphasis added). The term "sidewalk" is not defined, but our Supreme Court in *Hatch v Grand Haven Twp*, 461 Mich 457, 462; 606 NW2d 633 (2000), looked to the dictionary definition of the term to conclude that a sidewalk is generally understood as a pathway for pedestrians, usually along a road.

Here, it is apparent that the walkway where plaintiff fell qualifies, functionally, as a sidewalk because it is a path for pedestrians. *Id.* But the walkway does not satisfy the commonly understood meaning of a sidewalk running adjacent to or along a roadway. *Id.*; see also *Haskma v Grand Rapids*, 247 Mich App 44, 55; 634 NW2d 390 (2001). Rather, the photographic evidence presented to the trial court demonstrates that the walkway was constructed at an elevated level adjacent to a retaining wall for the Lodge Freeway. The walkway is not a raised path designed for pedestrian travel along the Lodge Freeway, but rather is part of a walkway leading to a footbridge that crosses the Lodge Freeway, and its purpose is to serve the developments at the elevated level of the retaining wall. Indeed, a guiding factor in interpreting the highway exception is its purpose to enhance the safety of public travel upon state-owned highways. *Meek v Dep't of Transp*, 240 Mich App 105, 111; 610 NW2d 250 (2000). The walkway in question here does not serve that purpose.

Also weighing against a conclusion that the walkway may qualify as a "sidewalk[] . . . on a highway" is the special nature of the Lodge Freeway. "While a paved way's proximity to a highway is a necessary condition for determining that it is a sidewalk under the highway exception to governmental immunity, it is not a sufficient condition." *Hatch, supra* at 464-465. The facts must be examined objectively to determine if a walkway is a sidewalk on a highway. *Id.* at 465 n 4. A court may also consult the Motor Vehicle Code, MCL 257.1 *et seq.*, in determining the meaning of terms used in the highway exception to governmental immunity. *Hatch, supra* at 462.

The Lodge Freeway constitutes a limited access road for which pedestrian use is prohibited. MCL 257.26; MCL 257.679a. Because a path for pedestrians is not permitted adjacent to a limited access road and the walkway in this case was constructed at an elevated level adjacent to a retaining wall along the Lodge Freeway, the objective facts do not permit a conclusion that the walkway where plaintiff fell is a "sidewalk[] . . . on a highway" within the meaning of MCL 691.1401(e). Therefore, the highway exception is not applicable to this case. Accordingly, we affirm the trial court's grant of summary disposition in favor of defendant, albeit on a different ground. *Liggett, supra* at 136-137.

Affirmed.

/s/ Henry William Saad

/s/ Michael J. Talbot