STATE OF MICHIGAN

COURT OF APPEALS

ADRIENE STONE,

Plaintiff-Appellee,

v

CITY OF ROYAL OAK,

Defendant-Appellant.

UNPUBLISHED
November 2, 2004

No. 247779
Oakland Circuit Court
LC No. 2002-044831-NO

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

MEMORANDUM.

Defendant appeals as of right the trial court order denying its motion for summary disposition on the basis of governmental immunity. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when she tripped in a hole in a brick inlay in a sidewalk. She filed suit alleging that defendant breached its duty to repair and maintain the sidewalk in reasonable repair so that it was reasonably safe for public travel. The trial court denied defendant's motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), finding that that an issue of fact existed as to whether defendant maintained the sidewalk in reasonable repair.

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

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's knowledge of the defect and time to repair it are conclusively presumed if the defect was readily apparent to an ordinarily observant person for thirty days or longer before the injury occurred. MCL 691.1403. The applicability of the highway exception is an issue of law that we review de novo. *Meeks v Dep't of Transportation*, 240 Mich App 105, 110; 610 NW2d 250 (2000).

We affirm. Contrary to defendant's assertion, the area in which plaintiff fell fits the definition of a "sidewalk." *Stabley v Huron-Clinton Metro Park Auth*, 228 Mich App 363, 368-369; 579 NW2d 374 (1998). A municipality has the obligation to actively perform necessary repair work to keep sidewalks in reasonable repair. *Jones v Enertel, Inc*, 467 Mich 266, 268; 650

NW2d 334 (2002). Plaintiff's allegations did not deal solely with the absence of a barrier around the hole. Cf. *Weakley v Dearborn Hts (On Remand)*, 246 Mich App 322; 632 NW2d 177 (2001). Furthermore, plaintiff did not allege that defendant was required to undertake actual construction in order to comply with the highway exception. Cf. *Wechsler v Wayne Co Rd Comm*, 215 Mich App 579; 546 NW2d 690 (1996). Defendant removed the stop sign two months before the accident, and left a hole in the sidewalk. Defendant's knowledge of the defect is conclusively presumed. MCL 691.1403. A genuine issue of fact existed as to whether defendant undertook the necessary repair work to maintain the sidewalk in reasonably safe condition for public travel. *Jones*, *supra* at 268.[1]

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

[1] Defendant's argument regarding the applicability of the two-inch rule, MCL 691.1402a(2), is not properly preserved for appellate review because it was not raised before the trial court. *Brown v Loveman*, 260 Mich App 576, 599; 680 NW2d 432 (2004).