

STATE OF MICHIGAN  
COURT OF APPEALS

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THOMAS DEKORTE and MARY DEKORTE,

Plaintiffs-Appellants,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

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UNPUBLISHED

June 28, 2005

No. 252490

Court of Claims

LC No. 00-017714-MD

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm.

Plaintiffs argue on appeal that the trial court erred in granting summary disposition in favor of defendant because there remained a genuine issue of material fact regarding whether a defect existed in the actual roadbed. After de novo review, considering the pleadings and documentary evidence, we disagree and conclude that plaintiff has failed to establish an exception to governmental immunity granted by law. See MCR 2.116(C)(7); *McGoldrick v Holiday Amusements, Inc.*, 242 Mich App 286, 289-290; 618 NW2d 98 (2000).

The highway exception to governmental immunity provides that 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); *Nawrocki v Macomb Co Rd Comm.*, 463 Mich 143, 157; 615 NW2d 702 (2000). However, this duty is only implicated when there is a failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel. *Id.* at 184. Traffic signals and signs are not part of the highway as that term is defined by statute. MCL 691.1401(e); *Nawrocki, supra* at 182-183 n 37.

Here, plaintiffs' complaint alleges that defendant failed to "install proper traffic control signals," failed to upgrade the traffic control signals and inspect the roadway on a regular basis for maintenance, and failed to ensure that there was a clearance interval to allow traffic to clear before the light turned green in either direction. Clearly, the complaint purports a theory of liability premised on a defective traffic signal, a condition outside of the actual roadbed designed for vehicular travel. See *id.*; *Marchyok v Ann Arbor*, 260 Mich App 684, 688; 679 NW2d 703 (2004).

Although plaintiffs attempted to establish that misplaced loop sensors located in the actual roadbed constituted a defect in its physical structure, the evidence did not support that contention. In his affidavit, Department of Transportation engineer Thomas Rathbun indicated that the loop leads of the loop sensors could only have been crossed at two locations, either at a hand hole or at the control box, both of which were outside the actual roadbed and beyond the curb. Further, plaintiffs' expert Donald Cleveland testified in his deposition that he doubted that there was a failure in the wires in the loop sensors located in the roadbed. And, City of Grand Rapids traffic engineer Jeffrey Janke testified in his deposition that the loop sensors were properly installed in the roadbed, but the loop leads were misconnected to the homerun cable at the hand hole or control box. He further testified that the problem could have been repaired at locations other than at the sensors located in the roadbed. In sum, plaintiffs' claim does not arise from a defect in the actual roadbed designed for vehicular travel; accordingly, it fails as a matter of law under the highway exception to governmental immunity. See MCL 691.1402(1).

Affirmed.

/s/ Donald S. Owens  
/s/ Mark J. Cavanagh  
/s/ Janet T. Neff