STATE OF MICHIGAN

COURT OF APPEALS

LAUREL YEOMANS and
STEVEN YEOMANS,

Plaintiffs-Appellees,

v

WAYNE COUNTY,

Defendant,

and

WAYNE COUNTY AIRPORT AUTHORITY,

Defendant-Appellant.

UNPUBLISHED
July 19, 2005

No. 252216
Wayne Circuit Court
LC No. 03-308574-NO

LAUREL YEOMANS and
STEVEN YEOMANS,

Plaintiffs-Appellees,

v

WAYNE COUNTY,

Defendant-Appellant,

and

WAYNE COUNTY AIRPORT AUTHORITY,

Defendant.

No. 252392
Wayne Circuit Court
LC No. 03-308574-NO

Before: Neff, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendants Wayne County (County) and Wayne County Airport Authority (Authority) appeal as of right from the trial court's order denying their motion for summary disposition based on governmental immunity. MCR 2.116(C)(7). We affirm.

I. Facts and Procedural History

In June of 2001, plaintiff Laurel Yeomans (Laurel) was an employee of Airlines Parking, a business that owned and operated a parking lot near the Detroit Metropolitan Airport (Airport).[1] On the day of her accident, Laurel drove the company van down a temporary drive created for use of buses in front of the Airport's international terminal and parked. While alighting from the van, Laurel stepped into a pothole, fell, and was injured.

In March of 2003, plaintiffs filed suit against defendants alleging that defendants failed to maintain the highway in reasonable repair so that it was reasonably safe and convenient for public travel, as required by MCL 691.1402, and that this failure proximately caused their injuries.[2] In August of 2003, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), but only argued that summary disposition was appropriate on grounds of governmental immunity. MCR 2.116(C)(7). Defendants argued that the unnamed temporary drive where Laurel was injured was not a highway within the meaning of MCL 691.1401(e), and, therefore, plaintiffs' claims failed to meet the highway exception to governmental immunity provided by MCL 691.1402. On October 31, 2003, the trial court denied defendants' motion for summary disposition based on governmental immunity. Defendants then separately appealed as of right under MCR 7.203(A)(1).[3] This Court consolidated the separate appeals pursuant to MCR 7.211(E)(2). *Yeomans v Wayne County*, unpublished order of the Court of Appeals entered January 7, 2004 (Docket No. 252216 &

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[1] At the time of the accident, the Detroit Metropolitan Airport was operated by a division of Wayne County. As a result of allegations of mismanagement of the airport, the legislature passed 2002 PA 90, which permitted the incorporation of public airport authorities to manage publicly owned airports and automatically created such an authority for airports with ten million or more enplanements in a twelve-month period. *Wayne County Bd of Comm'rs v Wayne County Airport Auth*, 253 Mich App 144, 151-153; 658 NW2d 804 (2002). 2002 PA 90 is known as the Public Airport Authority Act (PAAA) and is codified at MCL 259.108 *et seq*. The Detroit Metropolitan Airport was the only airport in Michigan that met the enplanement requirement. Consequently the Wayne County Airport Authority was automatically created to manage the Detroit Metropolitan Airport. *Wayne County Board of Comm'rs*, *supra* at 153 nn 19, 20.

[2] Plaintiff Steven Yeomans claim was based on a loss of consortium.

[3] Although defendants stated that their appeals were made pursuant to MCR 7.202(7)(a)(v), this rule, which has since been renumbered MCR 7.202(6)(a)(v), see 469 Mich clxxxi, merely defines final judgments and orders. MCR 7.203(A) is the rule that permits an appeal as of right from final orders such as those described under MCR 7.202(7)(a)(iii)-(v).

252392). Pursuant to MCR 7.203(A)(1),[4] the sole issue on appeal is whether defendants were entitled to summary disposition based on governmental immunity.

II. Standard of Review

This Court reviews de novo the grant or denial of a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In reviewing a motion brought under MCR 2.116(C)(7), this Court considers "'all documentary evidence submitted by the parties and accept[s] as true the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence.'" *Mitchell v Detroit*, 264 Mich App 37, 40; 689 NW2d 239 (2004). Whether the highway exception to governmental immunity applies is a question of law this Court reviews de novo. *Id.* at 40-41.

Furthermore, statutory interpretation is an issue of law that is reviewed de novo. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548; 685 NW2d 275 (2004). When interpreting a statute,

> [t]his Court's primary task . . . is to discern and give effect to the intent of the Legislature. *Murphy v Michigan Bell Tel Co*, 447 Mich 93, 98; 523 NW2d 310 (1994). "The words of a statute provide 'the most reliable evidence of [the Legislature's] intent . . . .'" *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999), quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). In discerning legislative intent, a court must "give effect to every word, phrase, and clause in a statute. . . . State *Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). The Court must consider "both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley*, *supra* at 237, quoting *Bailey v United States*, 516 US 137, 145; 116 S Ct 501; 133 L Ed 2d 472 (1995). "The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended." *Sun Valley*, *supra* at 237. "If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *Id.* at 236. [*Id.* at 548-549.]

III. Analysis

In Michigan, unless one of five exceptions specified by statute applies,[5] a governmental agency is "immune from tort liability if the governmental agency is engaged in the exercise or

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[4] MCR 7.203(A)(1) limits an appeal from an order described in MCR 7.202(7)(a)(iii)-(v) to the portion of the order with respect to which there is an appeal as of right. We note that MCR 7.203(A)(1) has not been amended to reflect the renumbering of MCR 7.202.

[5] The five statutory exceptions are: the highway exception, MCL 691.1402, the motor vehicle exception, MCL 691.1405, the public building exception, MCL 691.1406, the hospital exception, MCL 691.1407(4), and the proprietary function exception, MCL 691.1413.

discharge of a governmental function." MCL 691.1407(1). The immunity from tort liability provided by MCL 691.1407(1) is expressed in the broadest possible language and extends to all governmental agencies and applies to all tort liability when the governmental agencies are engaged in the exercise or discharge of a governmental function. *Nawrocki v Macomb Co Rd Comm'n*, 463 Mich 143, 156; 615 NW2d 702 (2000).

The statute defines governmental agency as "the state or a political subdivision," MCL 691.1401(d), and defines political subdivision as a "municipal corporation, county, county road commission, school district, community college district, port district, metropolitan district, or transportation authority or a combination of 2 or more of these when acting jointly; a district or authority authorized by law or formed by 1 or more political subdivisions; or an agency, department, court, board, or council of a political subdivision." MCL 691.1401(b). Hence the County is clearly a governmental agency. Likewise, MCL 259.110(1) states, "an authority created under or pursuant to [the PAAA] shall be a political subdivision and instrumentality of the local government that owns the airport and shall be considered a public agency of the local government for purposes of state and federal law." Therefore, the Authority, as an agency of a political subdivision, is a governmental agency. Because the County and Authority are governmental agencies, they have immunity for actions taken while engaging in the exercise or discharge of a governmental function such as the management and operation of an airport.[6] MCL 691.1407(1).

Plaintiffs allege that, under the highway exception, the County can be held liable for its failure to maintain the drive where Laurel was injured in reasonable repair.[7] The highway exception to the grant of governmental immunity states:

> Except as otherwise provided in section 2a, each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. [MCL 691.1402(1).]

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[6] The "establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports . . . and the exercise of any other powers herein granted to political subdivisions of this state, are hereby declared to be public, governmental and municipal functions. . . ." MCL 259.132.

[7] Under the PAAA, the Authority "shall indemnify and hold harmless the local government that owns the airport over which operational jurisdiction has been transferred to the authority for any civil claim existing or any civil action or proceeding pending by or against the local government involving or relating to the airport, airport facilities, or any civil liability related to the obligations of the local government issued or incurred with respect to the airport which was pending at the time of, or which had been incurred prior to, the transfer of operational jurisdiction of the airport to the authority." MCL 259.116(3). Hence, as the successor to the County, the Authority will be liable for any damages awarded to plaintiffs.

Thus, for the highway exception to apply, the person claiming an injury must establish that the injury resulted from the governmental agency's failure to maintain a highway, which was under its jurisdiction, in reasonable repair. *Id.* A governmental agency has jurisdiction over a highway if it has control of that highway. *Markillie v Livingston Co Bd of Rd Comm'rs*, 210 Mich App 16, 21-22; 532 NW2d 878 (1995). The *Markillie* Court explained, "[t]his definition is consistent with the Legislature's purpose in enacting the highway exception to governmental immunity. The Legislature's goal was to keep public highways 'reasonably safe and convenient for public travel.' That objective will be served by limiting liability for a defective highway to the entity with the authority to construct, maintain, and repair it." *Id.* at 22 (internal citations omitted).

In his deposition, Ali Dib testified that he was an engineer and an assistant division director for the Authority and previously for the County. He stated that he was responsible for overseeing construction alteration permits at the Airport and that this included road construction. Dib further stated that the temporary drive was built by the Airport's own maintenance crew and that that department continued to be responsible for the maintenance of the drive. Hence, the County clearly had the authority to construct, maintain, and repair the drive and, consequently, had jurisdiction over the drive for purposes of the highway exception to governmental immunity. *Id*. Therefore, all that remains to be determined is whether the drive was a highway subject to the highway exception.

The governmental immunity statute defines highway as "a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles." MCL 691.1401(e). Thus, the highway must be (1) a highway, road, or street, (2) controlled by a public entity and (3) open for public travel.

The County first argues that the drive cannot be a highway for purposes of the highway exception to governmental immunity because it was not, under 'general highway law', (1) regularly established in pursuance of existing laws, and (2) not used for the requisite 8 to 10 years as required by MCL 221.20. We find this argument to be completely without merit. MCL 221.20 states that "[a]ll highways regularly established in pursuance of existing laws . . . shall be deemed public highways . . . ." This statute does not, contrary to the County's contention, require that the highway be established by statutory or common law dedication, or through acceptance by user, but rather that the highway be established *pursuant* to any existing law, including laws such as the statute authorizing the County to lay out new roads.[8] MCL 224.11(1). Furthermore, the County's reading directly contradicts the plain language of MCL 691.1401(e), which simply defines highway to include public highways, roads and streets that are open to

[8] The County also erroneously relies on *Appleton Trust v Emmet Rd Comm'n*, 236 Mich App 546; 600 NW2d 698 (1999). *Appleton Trust* dealt with land that the road commission claimed was a public highway, but that plaintiff claimed was private property. *Id.* at 548-549. Thus the Court needed to determine whether the road commission had sufficiently established that the private property where the road was located had become public property. *Id.* at 554. The Court did not address whether a road built by a governmental agency on its own property and opened to the public was a public highway under the governmental immunity statute.

public travel. Hence, any highway, road or street that is public (i.e. under the control of a public body) and open to public travel is a highway subject to the highway exception.

The Authority argues that the highway is not a highway within the meaning of the highway exception because the exception does not apply to highways that are under the jurisdiction of the county but that are not part of the county road system. We disagree.

The Authority bases its argument on the third sentence of the highway exception which reads, "The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in . . . MCL 224.21" MCL 691.1402(1). The Authority contends that, because the statute does not define the phrase "county roads under the jurisdiction of a county road commission," MCL 691.1402(1), it must refer to roads that are part of the county road system as defined by MCL 247.652 and MCL 247.654. The Authority further argues that, by stating that the "liability, procedure, and remedy" for these roads is provided by MCL 224.21, the statute clearly exempts all highways that fall under the jurisdiction of a county, with the exception of roads within the county road system, from the application of MCL 691.1402(1). We find no basis for such an exception to the application of MCL 691.1402(1).

The highway exception to governmental immunity clearly states that "each governmental agency, having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). The statute also states that "a person who sustains bodily injury or damage to his or her property by reason of a failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair . . . may recover the damages suffered by him or her from the governmental agency." *Id.* Hence, according to the plain statutory meaning, the County, as a governmental agency, MCL 691.1401(b), (d), is responsible for all public highways, roads and streets open for public travel under its jurisdiction and may be held liable for failing to maintain those highways, roads and streets in reasonable repair. MCL 691.1402(1). The fact that the majority of the highways within a county will likely fall under the jurisdiction of the county road commission does not alter the fact that the County may still be responsible for some highways.[9] The third sentence of § 1402(1) does not alter this fact. The third sentence simply clarifies that for "county roads under the jurisdiction of a county road commission," the "liability, procedure, and remedy" is provided by MCL 224.21. MCL 691.1402(1). Hence, where a highway falls under the jurisdiction of a county, but has not been integrated into the county road system, the county is still subject to liability in the same manner and to the same extent that any other governmental agency would be liable under the first two sentences of MCL 691.1402(1).[10] Furthermore, MCL 224.21(2) states that:

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[9] Because only one governmental agency can have jurisdiction over any given stretch of highway, *Carr v Lansing*, 259 Mich App 376, 381; 674 NW2d 168 (2003), if the county road commission had jurisdiction over the road, the County could not have had jurisdiction.

[10] The board of county road commissioners is specifically empowered to relinquish jurisdiction over a county road, and, thereby, relieve itself of responsibility for that road. MCL 224.18(3).

> A county shall keep in reasonable repair, so that they are reasonably safe and convenient for public travel, all county roads, bridges, and culverts that are within the county's jurisdiction, are under its care and control, and are open to public travel. The provisions of law respecting the liability of townships, cities, villages, and corporations for damages for injuries resulting from a failure in the performance of the same duty respecting roads under their control apply to counties adopting the county road system.

The reference to county roads "within the county's jurisdiction" rather than under the jurisdiction of the county road commission contemplates responsibility for more than just the roads integrated into the county road system under MCL 247.652 and MCL 247.654. Indeed, it includes all roads under the County's "care and control." *Id.* Consequently, whether under the plain meaning of MCL 691.1402(1) or MCL 224.21(2), the County had jurisdiction over the drive in question at the time of the accident and the Authority has jurisdiction now.[11]

Finally, both the County and the Authority argue that the highway exception to governmental immunity does not apply to the drive in question because it was not "open for public travel." MCL 691.1401(e). We disagree.

Defendants argue that, because the drive in question was limited to bus traffic alone, it was not open for public travel and, therefore, was not a highway within the meaning of MCL 691.1402(1). Defendants rely on *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609; 664 NW2d 165 (2003), for the proposition that, where a highway's access is restricted to buses only, the highway exception to governmental immunity will not apply. Defendants' reliance is misplaced.

In *Maskery*, our Supreme Court was presented with a case involving whether a dormitory was "open for use by members of the public" under the public building exception to governmental immunity. MCL 691.1406. The Court explained,

> To determine whether a building is open for use by members of the public, the nature of the building and its use must be evaluated. The government, of course, controls the use that will be made of its buildings. If the government has restricted entry to the building to those persons who are qualified on the basis of some *individualized, limiting criteria of the government's creation*, the building is not open to the public. This test arises from the plain statutory language. If access to a building is limited in the manner we have described, members of the

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[11] The Authority also argues that, like the school district in *Richardson v Warren Consolidated School District*, 197 Mich App 697; 496 NW2d 380 (1993), governmental agencies charged with operating an airport are not capable of having jurisdiction over county roads. The Authority is simply incorrect. Unlike the school district in *Richardson*, the Authority has been affirmatively charged with the duty to develop "all aspects of the airport and airport facilities," including street and highway access and egress. MCL 259.116(1)(i). Therefore, the Authority is a governmental agency that can have jurisdiction over highways.

> public may not freely enter, and the building is not open for use by members of the public. [*Id.* at 618 (emphasis added).]

The Court further clarified that the "limiting criteria would not include universal requirements such as possession of a ticket, as for an athletic or theatrical event, or the need to universally bar entry to those with weapons, such as at courthouses or other secure, but public, facilities." *Id.* at 618 n 8. Because members of the general public could only gain access to the dormitory with the permission of a resident, the *Maskery* Court determined that the building was not open to the public. *Id.* at 620.

In the present case, there were no individualized limiting criteria that restricted access to the drive in question. While access to the drive was limited to buses, the limitation was a universal requirement that did not render the road inaccessible to the public at large. Any member of the public could use the drive so long as they did so in a vehicle that qualified as a bus. Furthermore, access was not restricted to particular types of buses or restricted to buses owned and operated by a specific governmental agency or private enterprise.

Because the drive was a highway, road, or street that was open for public travel, the County, and subsequently the Authority, had a duty to maintain the drive in reasonable repair so that it was reasonably safe and convenient for public travel. Therefore, the trial court did not err when it refused to grant defendants' motion for summary disposition based on governmental immunity.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Michael J. Talbot