

STATE OF MICHIGAN
COURT OF APPEALS

ETHEL BATES,

Plaintiff-Appellant,

v

VILLAGE OF ADDISON, KEYBANK, and
KEYCORP,

Defendants-Appellees.

UNPUBLISHED

October 4, 2005

No. 253374

Lenawee Circuit Court

LC No. 03-031135-NO

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition to defendant Village of Addison.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff tripped on a three-quarter inch rise in the sidewalk and fell, injuring her shoulder and hip. She filed this suit against defendant Village of Addison, asserting that the highway exception to governmental immunity applied and that defendant was liable for her injuries caused by the sidewalk's disrepair. The trial court granted defendant village's motion for summary disposition on the ground that plaintiff did not rebut the statutory presumption that the sidewalk was in reasonable repair and did not pose an unreasonable danger.

This Court reviews the trial court's grant or denial of a motion for summary disposition, as well as matters of governmental immunity, de novo. *Pierce v Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005). When evaluating motions for summary disposition based on governmental immunity under MCR 2.116(C)(7), the complaint and all documentary evidence are accepted as true "unless affidavits or other appropriate documents specifically contradict them." *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). The pleadings and documentary evidence must be construed in the light most favorable to the nonmoving party. *Tarlea v Crabtree*, 263 Mich App 80, 87-88; 687 NW2d 333 (2004).

¹ Defendants Keybank and KeyCorp were also granted summary disposition in a separate order, which plaintiff does not challenge on appeal.

The governmental immunity act, MCL 691.1401 *et seq.*, provides immunity to a government defendant when it is engaged in a governmental function. The immunity conferred on governmental agencies is broad, and the exceptions narrowly drawn. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 149; 615 NW2d 702 (1998). MCL 691.1402 provides for the exception alleged in the instant case, the “highway exception.” MCL 691.1402a(2) provides:

A discontinuity defect of less than 2 inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, crosswalk, or other installation outside of the improved portion of the highway designed for vehicular travel in reasonable repair.

Tort actions against governmental agencies must generally raise two separate issues: “1) whether the plaintiff has pleaded a cause of action in avoidance of governmental immunity, and 2) whether the plaintiff can establish the elements of a negligence action.” *Glancy v City of Roseville*, 457 Mich 580, 588; 577 NW2d 897 (1998). The character of the sidewalk defect bears on the issue of negligence. *Id.*, 588; see also *Mack v Detroit*, 467 Mich 186, 204; 649 NW2d 47 (2002). To succeed on her claim of negligence, plaintiff must prove that defendant owed a duty to her, that defendant breached that duty, that she suffered an injury, and that her injury was caused by defendant’s negligence. *Haliw v Sterling Hgts*, 464 Mich 297, 309-310; 627 NW2d 581 (2001). Where, as here, the defendant village is a governmental agency, plaintiff must also allege facts showing that her case fits within an exception to governmental immunity. *Id.*, 302-304.

Plaintiff argues that the deposition testimony of the village president that defendant never inspected or maintained the sidewalk was enough to rebut the statutory inference and avoid summary disposition. We agree with the trial court that the lack of inspections or maintenance was insufficient rebuttal. Plaintiff offered no evidence that, *before* the incident at hand, defendant village was aware of the three-quarter inch rise of the concrete slab or that it knew or should have known that it posed an unreasonable danger. The fact that defendant village allegedly failed to inspect or maintain the sidewalk does not, by itself, establish that the sidewalk was in a state of unreasonable disrepair. Absent adequate proof to rebut the statutory presumption, the trial court properly granted summary disposition in favor of defendant village.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey