

STATE OF MICHIGAN  
COURT OF APPEALS

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RUTH SEMON,

Plaintiff-Appellee,

v

CITY OF SAINT CLAIR SHORES,

Defendant-Appellant.

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UNPUBLISHED

October 30, 2007

No. 274777

Macomb Circuit Court

LC No. 05-004148-NO

Before: Zahra, P.J., and White and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right the orders denying defendant’s motion for summary disposition and motion for reconsideration. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when she tripped and fell due to an alleged defect in the crosswalk located in front of the senior citizen housing complex where she resided. She filed this action alleging negligence in the maintenance of the crosswalk, invoking the highway exception to governmental immunity. MCL 691.1402. Defendant moved for summary disposition asserting that the alleged defect in the crosswalk was less than two inches in depth, and therefore defendant is entitled to an inference that it maintained the crosswalk in reasonable repair. The circuit court denied defendant’s motion.

A trial court’s ruling on a motion for summary disposition is reviewed de novo. *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). Questions of statutory interpretation are also reviewed de novo on appeal. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). The Court’s primary obligation when construing a statute is to ascertain the legislative intent. *Id.* “If the language of the statute is unambiguous, the Legislature is presumed to have intended the meaning expressed.” *Id.* A court may go beyond the statutory language to interpret legislative intent only if the statutory language is ambiguous. *Id.*

“MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties.” *Wade v Dept’ of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). The governmental tort liability act, MCL 691.1401 *et seq.*; provides broad immunity for governmental agencies when they are engaged in governmental functions. There are, however, some narrowly drawn

exceptions to governmental immunity, including the highway exception. MCL 691.1402(1); *Glancy, supra*, 457 Mich at 584.

Governmental agencies having jurisdiction over a highway, including an agency with jurisdiction over the crosswalks, are required to maintain the area of the highway under its jurisdiction in reasonable repair. MCL 691.1402(1); *Glancy, supra*, 457 Mich at 584. The commonly referred to “two-inch rule” states that a discontinuity defect of less than two inches creates a rebuttable inference that the municipality maintained the crosswalk in reasonable repair. MCL 691.1402a(2).

Historically, the two-inch rule “was a common-law threshold for negligence based on the ‘reasonable repair’ standard of care of the statutory highway exception.” *Glancy, supra*, 457 Mich at 588. In *Glancy*, our Supreme Court noted that the two-inch rule was abolished by the Court in 1972. *Id.*, 582. The Court also noted that the Legislature set forth a duty of reasonable repair, and it was up to the Legislature, not the Court, to adopt a bright-line threshold such as the two-inch rule to establish a threshold for the lack of “reasonable repair.” *Id.*, 591.

The current statutory two-inch rule became effective in 1999 and is codified at MCL 691.1402a(2). The specific statutory language states “[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.” MCL 691.1402a(2).

The plain language of the statute refers to a “discontinuity defect of less than 2 inches.” There is nothing in the statute to suggest that the Legislature intended the two-inch reference to apply only to height and depth of a discontinuity defect without regard to width or any other measurements of the defect. Indeed, because the statute does not define “discontinuity defect,” we may consult a dictionary for the definition. *Haynes v Neshewat*, 477 Mich 29, 36; 729 NW2d 488 (2007), slip op, p 6. The Random House Webster’s College Dictionary (2d ed, 1997), p 374, defines “discontinuity” in relevant part as: “1. lack of continuity; irregularity. 2. a break or gap,” suggesting that “a discontinuity defect” is one involving an irregularity, break or gap that exceeds two inches on a horizontal plane.<sup>1</sup> Accordingly, regardless of the depth of the crack, defendant’s motion for summary disposition based on the two-inch rule was properly denied given that the width of the crack was shown to be greater than two inches in certain places.

Affirmed.

/s/ Brian K. Zahra  
/s/ Helene N. White  
/s/ Peter D. O’Connell

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<sup>1</sup> Of course, not all discontinuities are defects, and not all discontinuity defects in excess of two inches evidence a failure to maintain the highway in reasonable repair.