

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER KIRK,

Plaintiff-Appellant,

v

CITY OF HOUGHTON,

Defendant-Appellee.

UNPUBLISHED

September 23, 2008

No. 278475

Houghton Circuit Court

LC No. 06-013355-NO

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition based on governmental immunity. We reverse and remand.

Plaintiff was crossing US 41. The city sidewalk is edged by a curb that directly abuts the road. At the edge of the road in front of the curb is a storm sewer covered by a grate. The opening for the sewer extends into the vertical portion of the curb. Inserted into the opening in the curb is a metal fixture with a curved cap. The top of the cap is level with the horizontal surface of the sidewalk and curves down to cover the opening in the curb. Part of the cap is broken off, leaving an opening in the curb just below the surface of the sidewalk. Plaintiff stepped directly on the broken area of the cap. Her foot caught in the opening and she fell. Defendant did not dispute its jurisdiction over the sidewalk, but claimed that the curb is not part of the sidewalk.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The applicability of governmental immunity and questions of statutory interpretation are also reviewed de novo. *Davis v Detroit*, 269 Mich App 376, 378; 711 NW2d 462 (2005); *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

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). A highway is defined as "a public highway, road, or street that is open for public travel" and includes sidewalks. MCL 691.1401(e).

The governmental tort liability act (GTLA) does not define the term "sidewalk." Plaintiff's reliance on the definition of sidewalk in the motor vehicle code (MVC), MCL 257.60,

is misplaced. Our Supreme Court has held that definitions in the MVC are not to be used to interpret terms in the GTLA, except where such use is expressly permitted, as in MCL 691.1405. *Grimes v Dep't of Transportation*, 475 Mich 72, 85; 715 NW2d 275 (2006).

Case law has defined the word “sidewalk” as a paved way that runs alongside and adjacent to a public roadway intended for the use of pedestrians. *Hatch v Grand Haven Charter Twp*, 461 Mich 457, 462-465; 606 NW2d 633 (2000). However, this definition does not directly answer the question whether the curb is part of the sidewalk. The dictionary defines a curb as “a rim, esp. of joined stones or concrete, along a street or roadway, forming an edge for a sidewalk. *Random House Webster's College Dictionary* (1997). This definition indicates that a curb may be considered part of an adjoining sidewalk. In *Richard v Pembroke School Dist*, 151 NH 455, 458; 859 A2d 1157 (2004), the court reasoned that a curb that directly abutted a sidewalk was part of the sidewalk because it “was essentially inseparable from, and an integral part of, the sidewalk.”

In light of the dictionary definition of “curb” and the reasoning in *Richard*, we are persuaded that the curb in this case, and thus the sewer installation that is set into it, is part of the sidewalk. The dictionary defines a curb in part as an edge for a sidewalk, thus indicating that it may be considered part of a sidewalk. Additionally, as in *Richard*, the curb in this case directly abuts a sidewalk, making it an integral part of the sidewalk and forming part of the walk for foot passengers. Accordingly, because defendant did not dispute its jurisdiction over the sidewalk, the trial court erred in granting defendant’s motion for summary disposition.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Jane M. Beckering