

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN COLLINS,

Plaintiff-Appellee,

v

OAKLAND COUNTY COMMUNITY
COLLEGE,

Defendant-Appellant.

UNPUBLISHED

March 26, 2009

No. 282351

Oakland Circuit Court

LC No. 2006-078670-NO

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from the partial denial of its motion for summary disposition under MCR 2.116(C)(7) (governmental immunity). We hold that the trial court erred in concluding that the “public building exception” to governmental immunity applied to plaintiff’s claim. This exception applies only to a failure to “repair or maintain” a public building. Plaintiff alleges that her injuries were caused by a defect in the floor – specifically, the placement of an electrical floor socket that allegedly caused her to fall. Because there existed no defect in the electrical floor socket, which was properly maintained and functioned as intended, we conclude plaintiff’s claim is one of defective design barred by *Renny v Dep’t of Transportation*, 478 Mich 490; 734 NW2d 518 (2007). We reverse and remand for entry of judgment in favor of defendant. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Proceedings

Plaintiff, a dental hygiene technician student at defendant’s Highland Lake campus, was injured while pushing a chair across a floor in a dental lab located in a campus building open to the public. Her complaint included a claim of negligence that alleged, among other things, that defendant maintained a dangerous and defective condition on the premises where invitees would traverse, failed to keep the flooring free from improperly raised and protruding floor-mounted electrical outlet boxes, and created a dangerous condition by improperly repairing and/or maintaining the premises. In her deposition, plaintiff described pushing a wheeled chair over the floor when it suddenly stopped and caused her to fall. Although plaintiff admitted she was looking forward as she pushed the chair, the chair seat blocked her view of the floor. She testified that she was confident that the object that caused the chair to stop was a floor-mounted electrical plate located near a dental chair. An engineer who worked for defendant testified that the original design plans for the dental lab did not depict an electrical socket in the floor and that

it was apparently added in a later modification. An architect offered by plaintiff as an expert witness testified that the floor plate and the electrical plugs and cords that protruded from it constituted a dangerous and defective condition because it precluded a walking path that was free from obstructions. Defendant's moved for summary disposition, arguing it was immune from suit under the governmental immunity statute. The trial court rejected this argument and the instant appeal followed.

II. Analysis

Summary disposition is proper under MCR 2.116(C)(7) when the claim is barred by governmental immunity. Summary disposition should be granted only if no factual development could provide a basis for recovery. *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 396; 509 NW2d 829 (1993). Whether a particular claim is barred by governmental immunity is a question of law that we review de novo. *Pierce v City of Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005).

The statutory exceptions to governmental immunity include a public building exception. More specifically, MCL 691.1406, provides in pertinent part that:

[g]overnmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building

Plaintiff argues that the testimony of its architectural expert establishes that the electrical socket at issue in this case was "dangerous and defective" because it impeded an area over which people would walk, thereby creating a tripping hazard. Defendant, specifically relying on MCL 691.1406, argues that plaintiff has alleged nothing more than a design defect claim that is not exempt from governmental immunity. Defendant maintains that plaintiff can only avoid governmental immunity if she proves that the electrical socket here at issue was not properly "repaired or maintained." Since plaintiff's expert admits that the electrical socket was properly installed and functioned as intended, defendant concludes, plaintiff's suit must fail.

We are guided by our Supreme Court's recent holding in *Renny, supra* at 500-501, which interpreted the above-cited portion of MCL 691.1406:

The first sentence of MCL 691.1406 states that '[g]overnmental agencies have the obligation to repair and maintain public buildings under their control when they are open to the public.' This sentence unequivocally establishes that the duty of a governmental agency to 'repair and maintain' public buildings. Neither the term 'repair' nor the term 'maintain,' which we construe according to their common usage, encompasses a duty to design or redesign the public building in a particular manner. 'Design' is defined as 'to conceive; invent; contrive.' By contrast, 'repair' means 'to restore to sound condition after damage or injury.' Similarly, 'maintain' means to 'keep up' or 'to preserve.'

* * *

The second sentence of MCL 691.1406, which imposes liability on governmental agencies ‘for bodily injury and property damage resulting from a dangerous or defective condition of a public building,’ does not expand the duty beyond the repair and maintenance of a public building. The phrase imposes liability where the ‘dangerous or defective condition of a public building’ arises out of the governmental agency’s failure to repair and maintain that building. It is not suggestive of an additional duty beyond repair and maintenance. There is no reason to suspect that the Legislature intended to impose a duty to prevent ‘dangerous or defective condition[s]’ in public buildings in a manner wholly unrelated to the obligation clearly stated in the first sentence.

Following *Renny*, we hold that the trial court erred in denying defendant’s motion for summary disposition. Simply put, plaintiff claim amounts to nothing more than the assertion that the electrical socket was not properly located within the dental lab. This is a claim of design defect. Plaintiff has not and cannot establish that her injuries were the product of defendant’s failure to repair or maintain the electrical socket.

Plaintiff argues that “[o]ne cannot characterize a feature of a building as a ‘design’ issue when it was not present when the building was first constructed.” However, plaintiff offers no authority for this proposition. One cannot merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004); *Nat’l Waterworks, Inc v Internat’l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). Arguments advanced on appeal must be supported by citation of appropriate authority. MCR 7.212(C)(7); *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626; 750 NW2d 228 (2008). Nonetheless, we note that our Supreme Court in *Renny*, rejected the notion advanced by plaintiff. The *Renny* Court stated that “[n]either the term ‘repair’ nor the term ‘maintain,’ . . . encompasses a duty to design *or redesign the public building in a particular manner*.” (Emphasis added.) Thus, the fact that the electrical socket here at issue was not part of this building’s original design does not mean that plaintiff’s complaint about the location of this properly functioning electrical socket is the result of defendant’s failure to properly repair or maintain this building.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra