

STATE OF MICHIGAN
COURT OF APPEALS

COREY COLLINS and GWENESIA COLLINS,
Individually and on behalf of LUKE COLLINS, a
Minor, WILLIAM GEORGE and MARGARET
GEORGE, Individually and on behalf of KYLE
GEORGE, a Minor, MARTHA GRABOWSKI,
KHALID IQBAL and GLORIA ROCHA,
Individually and on behalf of ALEXANDER
IQBAL and ANDREW IQBAL, Minors, WILLIE
LYNN and PATRICIA LYNN, Individually and
on behalf of ASHLEY LYNN, a Minor,
RICHARD MARCOUX and LYNDIE
MARCOUX, Individually and on behalf of
BRYCE MARCOUX and BROOK MARCOUX,
Minors, FELICIANO MODINA, DEBIODELMA
MODINA, CARL VINCENT MODINA, JAMES
MODINA, KRYSTAL GAIL MODINA,
HERMINIGILDA ALMERIA, MARCIAL
ALMERIA, THOMAS RONCELLI, HELEN
RONCELLI, SERVESH SOOD and KIRAN
SOOD, Individually and on behalf of RISHI
SOOD and KUSH SOOD, Minors, CLEVELAND
STEGALL, NETTIE STEGALL, CLEVELAND
STEGALL, JR., WESLEY STEGALL and
NATALIE STEGALL,

Plaintiffs-Appellees,

v

DETROIT WATER AND SEWERAGE
DEPARTMENT,

Defendant-Appellant,

UNPUBLISHED

April 21, 2009

No. 282887

Macomb Circuit Court

LC No. 2006-001419-CZ

and

PULTE HOMES OF MICHIGAN
CORPORATION, PULTE LAND COMPANY,
L.L.C., and C.R. MILLER HOMES, INC.,

Defendants.

Before: Beckering, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

Defendant, Detroit Water and Sewerage Department, appeals of right the trial court's order denying its motion for partial summary disposition pursuant to MCR 2.116(C)(7). We affirm.

The sole issue on appeal is whether the sewage exception to governmental immunity, contained in MCL 691.1417(2), applies to the instant case. Defendant argues that the exception is inapplicable and, therefore, the trial court erred in denying its motion for partial summary disposition.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Washington v Sinai Hosp*, 478 Mich 412, 417; 733 NW2d 755 (2007). "In deciding a motion made under MCR 2.116(C)(7), a court should consider all affidavits, pleadings, and other documentary evidence submitted by the parties." *Holmes v Michigan Capital Medical Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000). "All well-pleaded allegations are accepted as true and construed in favor of the nonmoving party." *Dampier v Wayne Co*, 233 Mich App 714, 720; 592 NW2d 809 (1999). If the pleadings or other documentary evidence reveal no genuine issues of material fact, the court must decide as a matter of law whether the claim is statutorily barred. *Id.* The applicability of governmental immunity is a question of law that is reviewed de novo on appeal. *Carr v City of Lansing*, 259 Mich App 376, 379; 674 NW2d 168 (2003). Statutory interpretation comprises a question of law and is also reviewed de novo. *Id.*

This case arises from injuries alleged to have occurred as a result of a sewer collapse and resulting sinkhole that developed on 15 Mile Road in Sterling Heights, Michigan. In the early morning hours of August 22, 2004, the sewer main located approximately 60 feet below 15 Mile Road, near the intersection of 15 Mile Road and Hayes Road, suffered a break and collapsed. Over an eight-day period, the sinkhole increased to a final size of 245 feet in length, 130 feet in width, and 69 feet in depth. To repair the sewer main break and ensuing sinkhole, around-the-clock construction for nine and one-half months was required.¹

¹ The sewer main is known as the Romeo Interceptor and is part of the Oakland-Macomb Interceptor System, which is owned and operated by defendant. The Romeo Interceptor
(continued...)

Plaintiffs are homeowners, and members of their households, who live along 15 Mile Road. Their homes abut the portion of 15 Mile Road where the sinkhole emerged. According to plaintiffs, they suffered injuries to their respective properties and to their health as a result of the sewer collapse, sinkhole, and ensuing construction. Plaintiffs alleged the following damages to their properties: land erosion; the sinking of their homes, which resettled in an uneven manner; stress damage to homes so severe that reconstruction is required; cracks throughout walls and floors; walls separating from ceiling joints; floorboards separating; doors and window frames being knocked out of alignment; windows cracking, breaking and failing to close securely; fallen siding; nail pops; driveways, walkways, and patios cracking, sinking and/or shifting; sewage backup into homes; an odor of sewage permeating the homes and surrounding areas; and plaintiffs' properties were rendered valueless and unmarketable. Plaintiffs also alleged suffering from various illnesses including, respiratory problems, headaches, stomachaches, nausea, eye infections, stress, and depression.

Plaintiffs filed suit alleging a claim for damages under the sewage disposal exception to governmental immunity pursuant to MCL 691.1417.² Defendant moved for partial summary disposition arguing that it was entitled to governmental immunity because a "sewage disposal system event" under MCL 691.1416(k) did not occur, and thus, the sewage exception did not apply because plaintiffs could not demonstrate that sewage overflowed/backed up onto their own properties. The trial court denied the motion.

Subject to various exceptions, a governmental agency is immune from tort liability if it is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1). The sewage disposal exception to governmental immunity provides, in pertinent part:

A governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency. MCL 691.1417(2).

A "sewage disposal system event" is defined as "the overflow or backup of a sewage disposal system onto real property." MCL 691.1416(k).

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collapsed as a result of "piping," which is the process by which fine soil particles are carried into a sewer tunnel by groundwater migrating through miniscule cracks in the tunnel. Over time, piping can compromise the integrity of a sewer tunnel because the soil that surrounds and supports the tunnel invades the structure, leaving the tunnel without adequate support and leading to its eventual collapse. This sinkhole emerged as a direct result of the tunnel collapse.

² To maintain a claim under the sewage disposal exception to governmental immunity, a plaintiff must demonstrate the following: (1) the governmental agency was an appropriate governmental agency, (2) the sewage disposal system had a defect, (3) the governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect, (4) the governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect, and (5) the defect was a substantial proximate cause of the event and the property damage or physical injury. MCL 691.1417(3).

The dispute focuses on whether the real property referenced in the statute must be the claimant's own property. "In considering a question of statutory construction, this Court begins by examining the language of the statute." *Macomb County Prosecutor v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001). Statutory language is read "in context to determine whether ambiguity exists." *Id.* "If the language is unambiguous, judicial construction is precluded." *Id.* Unambiguous statutes are to be enforced as written. *Id.* "Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 659; 651 NW2d 458 (2002). "Further, the language must be applied as written, and nothing should be read into a statute that is not within the manifest intent of the Legislature as indicated by the statute itself." *Id.* (internal citations omitted).

MCL 691.1416(k) states that there must be an "overflow or backup of a sewage disposal system onto real property" in order to maintain a claim under the sewage disposal exception to governmental immunity. We rely on basic principles of statutory construction to aid in the resolution of this issue. In examining the plain language of the statute, it is apparent that there is no language mandating that the real property on which the sewage overflows/backup belong to the claimant. This Court may not read into a statute a requirement that is not manifest by the words of the statute itself. *Rossow, supra* at 659. Consequently, defendant's attempt to read additional language into the plain text of the statute must fail.

In addition, plaintiffs assert that, if required, they could demonstrate that sewage overflowed/backed up onto their own properties. Certain plaintiffs testified that sewage appeared on their lawn, in their basement, and at the bottom of their toilets. In addition, all plaintiffs allegedly experienced the strong and foul odor of sewage coming from in and around their homes, oftentimes in their water.³ Minimally, based on this evidence, sewage did overflow or back up onto the property of some plaintiffs. However, even assuming that none of the plaintiffs' properties were physically invaded by sewage, the trial court still did not err in denying defendant's motion for partial summary disposition. Defendant does not dispute plaintiffs' assertion that sewage overflowed/backed up onto publicly owned real property situated below 15 Mile Road in the immediate vicinity of the sewer and plaintiffs' residences.

Affirmed.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Pat M. Donofrio

³ Air rights are considered real property. See *In re Acquisition of Billboard Leases and Easements*, 205 Mich App 659, 662; 517 NW2d 872 (1994).