

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KIMBERLY EVANS, as Next Friend of NOAH  
EVANS, a Minor,

UNPUBLISHED  
May 28, 2009

Plaintiff-Appellee,

v

No. 284292  
Wayne Circuit Court  
LC No. 06-618246-NO

CITY OF LIVONIA,

Defendant-Appellant,

and

KNIGHT INVESTMENT, INC., d/b/a KNIGHT  
CONSTRUCTION, and SBC AMERITECH,

Defendants.

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

PER CURIAM.

Defendant City of Livonia appeals as of right the trial court's order denying its motion for summary disposition based on governmental immunity. We reverse and remand for entry of an order granting defendant's motion for summary disposition. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In this "highway exception" case, defendant owns the walkway where the hired contractor of a utility company removed a concrete slab and replaced it temporarily with stones and gravel so work could be done on an underground conduit. The gravel patch and missing pavement were not marked with any warnings. The minor plaintiff was riding his bicycle along the walkway when he hit the gravel patch. Plaintiff fell from his bicycle, struck his leg against a cut-off pipe, and received a fairly large cut that has left him with a scar. Plaintiff sued the city, the utility company, and the contractor. The utility company and the contractor have settled, leaving the city as the sole remaining defendant.

Defendant moved for summary disposition, arguing that it was immune and that the highway exception, MCL 691.1402, did not apply. Defendant argued that plaintiff's injury was not caused by a defect of a highway as defined by the statutes; rather, it was caused by the pipe,

which was not part of, nor located in, the highway. Plaintiff responded that the location of the pipe was wrong focus, and that the sidewalk defect caused the accident. The trial court agreed with plaintiff, finding that a trier of fact could find that the sidewalk defect, not the pipe alone, caused the injury. The court also found that the sidewalk abutted the public street and so was within the scope of the highway exception.

When reviewing a trial court's decision on a motion for summary disposition made pursuant to MCR 2.116(C)(7), we must accept as true the plaintiff's well-pleaded allegations and construe them in a light most favorable to the plaintiff. *Stabley v Huron-Clinton Metro Park Auth*, 228 Mich App 363, 365; 579 NW2d 374 (1998). The motion should not be granted unless no factual development could provide a basis for recovery. We review a summary disposition determination de novo as a question of law. *Id.*

The highway exception, MCL 691.1402(1), provides in pertinent part:

[E]ach governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury . . . by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency.

The highway exception is a narrowly drawn exception to a broad grant of immunity. *Haaksma v Grand Rapids*, 247 Mich App 44, 53; 634 NW2d 390 (2001). The term "highway" is defined as "a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles." MCL 691.1401(e). The *Stabley* Court looked at dictionary definitions that variously defined "sidewalk" as being "along the side of a road," "at the side of a roadway," and "part of a public street or highway." *Stabley, supra* at 367. The *Stabley* Court concluded "that linking the word 'sidewalk' with an adjacent road is in accord with the common and approved usage of the word." *Id.* at 369. It found the exception did not apply to the walkway at issue because it was not adjacent to the roadway but "runs through the wooded interior of the park." *Id.*

In *Haaksma*, this Court applied *Stabley*, and held that the highway exception did not apply to a sidewalk that ran "between, not alongside" two city streets; that is, it provided a pedestrian connection between two somewhat parallel streets. *Haaksma, supra* at 55. A private building was on one side of the walk and a city parking lot was on the other side. The *Haaksma* Court stated, "[B]ecause the sidewalk does not run alongside or adjacent to a public roadway, the highway exception does not apply." *Id.*

The trial court in this case erred in concluding that the walkway was adjacent to a public street. The walkway in this case, like the walkway in *Haaksma*, is a pedestrian connection between two public streets, but does not run alongside such a street. As the *Stabley* Court noted, "The Legislature chose not to impose liability for injuries sustained on all paved walkways, but rather used the specific term 'sidewalk.'" *Stabley, supra* at 369-370.

We reverse the trial court's decision denying defendant's motion for summary disposition and remand for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jane E. Markey