

Court of Appeals, State of Michigan

ORDER

Dave Linton v Arenac County Road Commission

Docket No. 286635

LC No. 04-009082-CZ

Kathleen Jansen
Presiding Judge

Karen M. Fort Hood

Elizabeth L. Gleicher
Judges

The Court orders that the majority opinion issued on September 22, 2009, is hereby AMENDED. The majority opinion contained the following clerical error: On page 10 of the majority opinion, this Court's decision in *Linton v Arenac Co Road Comm*, 273 Mich App 107; 729 NW2d 883 (2006), was twice incorrectly identified as having appeared in Volume 270 of the Michigan Appeals Reports rather than in Volume 273 of the Michigan Appeals Reports. Accordingly, the relevant case citation in the sixth line of text on page 10 of the majority opinion is AMENDED to read "*Linton*, 273 Mich App 119," and the case citation in the ninth line of text on page 10 of the majority opinion is AMENDED to read "*Linton*, 273 Mich App 120".

In all other respects, the majority opinion issued on September 22, 2009, remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 01 2009
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

DAVE LINTON and MARILYN LINTON,

Plaintiffs-Appellees,

v

ARENAC COUNTY ROAD COMMISSION,

Defendant-Appellant.

UNPUBLISHED

September 22, 2009

No. 286635

Arenac Circuit Court

LC No. 04-009082-CZ

Before: Jansen, P.J., and Fort Hood and Gleicher, JJ.

PER CURIAM.

Plaintiffs Dave and Marilyn Linton allege that acts of negligence attributable to defendant Arenac County Road Commission proximately caused May 2004 water damage on their property. The Road Commission appeals as of right challenging a circuit court order denying its motion for summary disposition premised on governmental immunity. We affirm.

I. Background

This case has previously reached this Court, and we reiterate the following procedural summary from this Court's prior decision, *Linton v Arenac Co Rd Comm*, 273 Mich App 107; 729 NW2d 883 (2006):

. . . This case involves a dispute regarding whether a rural, roadside drainage ditch is a "storm water drain system" as set forth in MCL 691.1416(j). .

..

* * *

The Lintons alleged that in the fall of 2003, the Road Commission cut down trees, limbs, and branches along Roseburgh Road, which is near the Lintons' Moffatt Township home, and deposited this debris into a roadside drainage ditch. In March 2004, spring rains floated the debris down the roadside drainage ditch and formed a dam at a culvert near the Lintons' property; this dam in turn caused the Lintons' property to flood. The Lintons notified the Road Commission of the problem on March 26 and April 16, 2004. The Road Commission took no action, and on May 14, 2004, heavy rainfall caused "an

overflow and back up” of water that damaged the Lintons’ house, barn, furniture, and other personal property.

The Lintons filed suit against the Road Commission under the “sewage disposal system event” exception to the governmental immunity act[, MCL 691.1417]. More specifically, they alleged that the roadside drainage ditch and culvert were “a storm water drain system,” as that term is used in the statutory definition of “sewage disposal system.” [MCL 691.1416(j).] According to the Lintons, the Road Commission breached its duty to maintain the roadside drainage ditch and culvert, which, they asserted, were under the jurisdiction and control of the Road Commission.

The Road Commission moved for summary disposition under MCR 2.116(C)(7), (8), and (10), arguing that the roadside drainage ditch and culvert were not part of any “sewage disposal system” or “storm water drain system” and that the event at issue was not a “sewage disposal system event.” [MCL 691.1416(k).] The Road Commission attached an affidavit from its Engineer/Manager, Darren J. Pionk, stating that Moffatt Township did not have a sewage disposal system and that residents used private drain fields. Pionk also opined that the roadside drainage ditch at issue was not a county drain and was not part of any sewage disposal system or storm water drain system. According to the Road Commission, the Lintons were attempting to extend its liability to a “simple roadside ditch, in a circumstance which does not involve the overflow or backup of sewage” The Road Commission asserted that the phrase “storm water drain system” referred solely to urban, underground storm drains that connect to a sewage system.

The Lintons responded, arguing that the Road Commission was impermissibly attempting to read additional language into the plain text of the statute by contending that “storm water drain system” referred to urban, underground storm drains. They provided an affidavit from engineer Jon W. Ledy, opining that “[r]oadside ditches are primarily designed and maintained to drain storm water from one point to another” and that “[i]n rural areas they perform the same functions as underground storm drains” . . .

After hearing oral arguments on the motion, the trial court granted summary disposition in favor of the Road Commission, stating: “I don’t think this is a drainage system. I don’t think a road ditch is a drainage system as defined by that statute. If they meant road ditch or plowed furrow, the legislature would have said that.”

The Lintons now appeal as of right the trial court’s order granting summary disposition for the Road Commission on the basis of governmental immunity. [*Id.* at 108-110 (footnotes omitted).]

The Court then analyzed, in relevant part as follows, the meanings of several pertinent statutory provisions:

(1) Sewage Disposal System Event Exception to Governmental Immunity

MCL 691.1417(2) provides an exception to governmental immunity for sewage disposal system events as follows:

“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. Sections 16 to 19 abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory.” (Emphasis added).

(2) MCL 691.1416(k): “Sewage Disposal System Event”

MCL 691.1416(k) defines the term “sewage disposal system event” as follows:

“‘Sewage disposal system event’ or ‘event’ means the overflow or backup of a *sewage disposal system* onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:

* * *

“(i) An obstruction in a service lead that was not caused by a governmental agency.

“(ii) A connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout.

“(iii) An act of war, whether the war is declared or undeclared, or an act of terrorism.” (Emphasis added).

(3) MCL 691.1416(j): “Sewage Disposal System”

MCL 691.1416(j) defines the term “sewage disposal system” as follows:

“‘Sewage disposal system’ means all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a *storm water drain system* under the jurisdiction and control of a governmental agency.” (Emphasis added).

Importantly, there is no definition in the statute of a “storm water drain system.”

D. Interpreting the Provisions

(1) Instrumentalities Dealing with Sewage

The Road Commission argues that the roadside drainage ditch is not part of a sewage disposal system because it is neither used nor designed for sewage. The Road Commission also argues that, even though the Legislature provided that a ““(s)ewage disposal system’ ... includes a storm water drain system,” the sewage disposal system event exception applies only to storm drains that also service sewage, such as a combined sanitary and storm sewer. We find these arguments without merit.

The phrase “sewage disposal system” does evoke an interpretation that relates to the disposal of sewage, or waste matter, as that term is commonly understood. However, it is significant that the Legislature made a point to clearly differentiate between “storm sewers, sanitary sewers, (and) combined sanitary and storm sewers(.)” If the Legislature had intended that the exception apply solely to sewers that only service the discharge of sewage, then it would not have made a point of individually listing these different classes of sewers. Similarly, if the Legislature had intended that the exception only apply to sewage, then it would also not have made a point of specifically clarifying that the exception applies to “a *storm water* drain system.” [Emphasis in original.] To agree with the Road Commission’s interpretation would impermissibly render the noted language nugatory.

Further, in *Jackson Co Drain Comm’r v Village of Stockbridge*, [270 Mich App 273, 285-287; 717 NW2d 391 (2006),] this Court held that the sewage disposal system event exception applies to county drains that carry drainage water. . . . Thus, we conclude that the sewage disposal system event exception clearly applies to more than just “sewage” disposal systems, as that term would ordinarily be understood. Pursuant to the statutory language, the exception applies to systems designed for storm water drainage.

(2) “Storm Water Drain System”

Having concluded that the sewage disposal system event exception applies to more than just “sewage” disposal systems, we next consider, as the Road Commission aptly puts it, “whether the overflow of a simple county roadside ditch, ... which allowed surface water from heavy spring rains to flood (the Lintons’) property, falls within this exception.” More specifically, we consider whether the roadside drainage ditch and culvert are “a storm water drain system,” as that term is used in the statutory definition of “sewage disposal system.”

Unfortunately, as mentioned, none of the relevant statutory provisions defines the term “storm water drain system.” Indeed, that phrase is not mentioned anywhere else in any Michigan statute. Thus, in an effort to discern the meaning of this phrase, we find it appropriate to consider separately the meaning of its remaining components, i.e., the term “drain” and the term “system.”

a. “Drain”

Courts may consult a dictionary to determine the meaning of a term that is not defined within a statute. *Random House Webster's College Dictionary* (1997) defines the term “drain” as a “pipe, conduit, etc., by which a liquid drains.” But this definition is of only marginal assistance in resolving this issue.

Thus, we look to the Drain Code to provide additional interpretation assistance. Although the terms of one statute are not dispositive in determining the meaning of another, especially if the statutes were not designed to effectuate a common result, the terms of one statute may be taken as a factor in determining the interpretation of another statute. The sewage disposal system event exception expressly includes overflows or backups of “storm water *drain* systems.” [Emphasis in original.] Thus, it is relevant that, under the Drain Code,

“(t)he word ‘drain’ ... shall include the main stream or trunk and all tributaries or branches of any creek or river, *any watercourse or ditch*, either open or closed, any covered drain, any sanitary or any combined sanitary and storm sewer *or storm sewer* or conduit composed of tile, brick, concrete, or other material, any structures or mechanical devices, that will properly purify the flow of such drains, any pumping equipment necessary to assist or relieve the flow of such drains and any levee, dike, barrier, or a combination of any or all of same constructed, or proposed to be constructed, for the purpose of drainage or for the purification of the flow of such drains, but shall not include any dam and flowage rights used in connection therewith which is used for the generation of power by a public utility subject to regulation by the public service commission.” [MCL 280.3 (emphasis in original).]

As the emphasized language indicates, the term “drain” under the Drain Code specifically includes a “ditch.” The term “ditch” is not further defined in the Drain Code, but *Random House Webster's College Dictionary* (1997) defines “ditch” as “1. a long, narrow excavation in the ground, as for drainage or irrigation; trench.” Further, in § 323, the Drain Code refers to “a ditch or drain ... constructed ... primarily for drainage of private lands ... along a public highway” These definitions provide strong support for a conclusion that the roadside drainage ditch here is a storm water drain for purposes of the sewage disposal system event exception.

b. “System”

Jackson is again relevant for providing some instruction on whether the roadside drainage ditch here qualifies as “a storm water drain *system*.” *Jackson* arose “when the village of Stockbridge contracted with the Ingham County Drain Commissioner to discharge its excess wastewater into the Jacobs Lake Drain, which flows through the Wild River and Portage River drains and ultimately the Grand River Drain.” [*Id.* at 275.] Addressing the applicability of the sewage disposal system event exception to save the plaintiffs’ claim from being barred by governmental immunity, the *Jackson* panel concluded that “(t)he plain language

of the statute includes the drains at issue here in the definition of ‘sewage disposal system.’” [Id. at 286.] The *Jackson* panel reached this decision because the Jacobs Lake Drain was clearly part of a system of several connected drains.

Random House Webster's College Dictionary (1997) defines the term “system” as “1. an assemblage or combination of things or parts forming a complex or unitary whole.” Applying this definition here, the question that must be answered is whether the roadside drainage ditch at issue is, like the Jacobs Lake Drain, part of a system of connected drains, i.e., an assemblage or combination of drains that forms a complex or unitary whole. [*Linton, supra* at 114-120 (footnotes omitted).]

The Court then applied the meanings of the relevant statutory provisions to the parties’ dispute:

The Lintons argue that the roadside drainage ditch was part of a storm water drain *system*, noting that the debris floated downstream and dammed a culvert. Further, during oral argument on the motion for summary disposition, Dave Linton interjected that the ditch did connect to a river, but the trial court appropriately dismissed the statement because it was improper testimony during the summary disposition hearing. *Given the absence of any admissible evidence or testimony on the matter, it is unclear from the record whether the roadside drainage ditch here was part of a larger drainage system. Thus, there remains a question of fact regarding whether the roadside drainage ditch is part of a “system.” Accordingly, we conclude that this case should be remanded for discovery on the issue whether the roadside drainage ditch was part of a system of drains.* [Id. at 120-121 (emphasis added).]¹

II. Proceedings on Remand

After the parties engaged in discovery, the Road Commission again filed a motion for summary disposition under MCR 2.116(C)(7), (8), and (10), insisting that as a matter of law “the roadside ditch and culvert herein are not part of a County Drain; do not connect to a county drain; are intended only to drain the roadbed of Roseburgh and Allen Road within a short, natural radius; and are not part of any established system of drains.” The Lintons responded that a documented field investigation of the area by licensed engineer and surveyor Timothy Lapham established that “[t]he storm water drainage system in the instant action is composed of parts [ditches and culverts that convey the storm water runoff to Wells Creek and other natural watercourses thereafter] . . . forming a complex or unitary whole, the purpose of which is the conveyance of water through the system to the natural watercourse.” The circuit court held a

¹ The Court also observed “that if the trial court concludes on remand that the roadside drainage ditch was a sewage disposal system, then it follows that the overflow and flooding that occurred here was a sewage disposal system ‘event’: ‘the overflow or backup of a sewage disposal system onto real property.’” *Id.* at 121.

hearing at which it entertained the parties' arguments, but withheld a ruling "until we can take testimony and have other evidence considered"

At a June 2008 evidentiary hearing, the parties each presented testimony by an expert witness in the field of civil engineering and introduced documentary evidence, including maps and photographs. The circuit court ultimately reasoned as follows that it would deny the motion for summary disposition:

Basically, I think this is . . . part of a system, all right. When we had the hearing that went to the Court of Appeals, I thought, and I don't know if it was that well-presented or maybe I wasn't listening well enough, but I had the impression that it was basically a road ditch and a culvert, or a road ditch maybe with a culvert, and this is more than that, this has multiple components. And the law on this, seems to me like it's very unclear. Maybe it is only unclear to me.

But you have these ditches on the west side of Roseburgh Road, you have this pretty good-size ditch coming south, then you have this 42-inch culvert, which I can't understand why that's there, why you would need a 42-inch culvert there when you have a 15 downstream, but I am not a civil engineer. You have these ditches along the west side of Allen Road, or, rather, I should say you have these ditches to the west going along Allen Road, you have that culvert west of— a ways there on Allen Road, but according to this drainage area, that's west of this particular drainage area, and I'm referring to Defendant's Exhibit No. 3. You have the ditch going south from Allen Road along, I guess, the west side of Roseburgh Road, you have the 15-inch culvert going east across the road, you have this at least remnants of what looks to me like a ditch heading east, and the testimony was it goes to Wells Creek.

Now, . . . I am not specifically finding in this case where I think the system ends, whether it's Saginaw Bay or the Rifle River . . . but I think, at a minimum, from Wells Creek, going up this ditch remnant or old ditch, and then going on up to where I started a few minutes ago, I think that probably is a system, I might be completely wrong, a system as the Court of Appeals at least apparently wants us to consider one, or consider that term, you know, this definition, an assemblage or combination of things or parts forming a complex or unitary whole.

Well, . . . this, quote, "system," as I have just described it, isn't all that complex, and certainly isn't as complex as probably lots of places, but we have more than just a road ditch out in front of a house here, too. We have more than just a road ditch that may not . . . drain either of the two directions, if I am saying that right. In other words, it might just be a segment of a road ditch that holds water until it seeps away or something. And I am not insinuating . . . that that's . . . the situation here that we have. But in that example that I just gave, that certainly wouldn't be a system, I don't think, but I think here we are, or it is as the Court of Appeals seems to want us to interpret the statute. So anyway, that's my finding.

The court entered an order denying the motion for summary disposition “for the reasons stated on the record.”

III. Analysis

A. Standards of Review

The circuit court did not specify pursuant to which subrule of MCR 2.116(C) it found summary disposition appropriate here. In finding that the facts presented demonstrated the existence of a “storm water drain system” for purposes of MCL 691.1416(j), the court apparently intended to conclude that the Road Commission was not entitled to governmental immunity under MCR 2.116(C)(7). “To survive a C(7) motion . . . , the plaintiff must allege facts warranting the application of an exception to governmental immunity.” *Linton*, 273 Mich App 111. If the parties submit admissible evidence in support of or in opposition to a (C)(7) motion, the circuit court must consider it. MCR 2.116(G)(5); *Linton*, 273 Mich App 111. “[T]he plaintiff’s well-pleaded factual allegations, affidavits, and other admissible documentary evidence are accepted as true and construed in the plaintiff’s favor, unless contradicted by documentation submitted by the movant.” *Id.* “Additionally, ‘where material facts are not in dispute . . . , the MCR 2.116(C)(7) analysis parallels the MCR 2.116(C)(10) analysis and is a question of law for the trial court.’” *Id.* at 111-112 (citation omitted). This Court considers de novo a circuit court’s summary disposition rulings, *Robinson v City of Lansing*, 282 Mich App 610, 613; 765 NW2d 25 (2009), as well as determinations concerning “[t]he applicability of governmental immunity” and decisions involving “questions of statutory interpretation.” *Linton*, 273 Mich App 112.

B. Proofs Regarding a Storm Water Drain System

Our review of the testimony and documentary evidence introduced at the evidentiary hearing reflects that the parties do not dispute the key facts underlying the circuit court’s ruling. The Lintons’ real property that flooded in May 2004 sits on the east side of Roseburgh Road, a short distance from Roseburgh Road’s intersection with Allen Road, which travels in an east-west direction but does not continue beyond Roseburgh Road. Ditches extend along Allen Road from its intersection with Roseburgh Road to the west for approximately 1,170 feet. Ditches also extend along each side of Roseburgh Road for about 3,500 feet north of its intersection with Allen Road. A 42-inch culvert directs water toward the south through the Allen Road intersection with Roseburgh Road. Another ditch runs for 350 feet along a “seasonal” portion of Roseburgh Road south of its intersection with Allen Road, then a 15-inch culvert directs water to the east. A trench or ditch takes water from the 15-inch culvert to the east for some unspecified distance toward wetlands, Wells Creek, the Rifle River, and beyond. A former, deceased husband of Marilyn Linton excavated this trench in the 1970’s; the trench commenced within the Road Commission’s right of way, but then proceeded southeasterly over land owned by the state. The ditches and culverts served a natural drainage area of approximately 0.2 square miles. The Road Commission’s engineer, Pionk, and the Lintons’ retained engineer, Lapham, both agreed that within the 0.2-square mile drainage basin surface water naturally flowed in a southeasterly direction. Both engineers also confirmed at the hearing that the ditches and culverts along Roseburgh Road and Allen Road transported storm water off the roadways and away from the roadbeds, and additionally transported surface water that flowed into the ditches from the surrounding 0.2-square mile area of countryside.

Applying the definition of “system” previously adopted by this Court, “an assemblage or combination of things or parts forming a complex or unitary whole,” *Linton*, 273 Mich App 120, we find that the undisputed facts in this case establish the existence of a “storm water drain system” as a matter of law. In summary, the evidence agrees that the nearly 1-mile series of ditches and culverts along Roseburgh Road and Allen Road work together to convey storm water or surface water away from the 0.2-square mile drainage area toward wetlands, Wells Creek, and other natural watercourses beyond. Furthermore, as the circuit court found, the evidence agrees that the ditches along Roseburgh Road, the ditches along Allen Road, the several culverts in this drainage area, and the ditch or trench across state land that begins in the Road Commission right of way all comprise parts of a *unitary* storm water drain system in this 0.2-square mile drainage area. Contrary to the Road Commission’s position, the fact that the majority of the ditch dug by Marilyn Linton’s former husband fell outside Road Commission jurisdiction and control does not operate to remove the entirety of the unitary storm water drain system that exists here from the definition previously delineated by the Court. We recognize that the governing statutory definition of “sewage disposal system” “includes a storm water drain system *under the jurisdiction and control of a governmental agency*,” MCL 691.1416(j) (emphasis added), but the parties do not dispute that the other ditches and culverts comprising the system here, including the ditch and culvert that allegedly generated the May 2004 backup of water onto the Lintons’ property, all fell within the Road Commission’s jurisdiction and control. Moreover, MCL 691.1417(2) sets forth the basic proposition that “[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*” (emphasis added), and MCL 691.1416(b) unambiguously defines an “[a]ppropriate governmental agency” as “a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, *the portion of the sewage disposal system that allegedly caused damage or physical injury*.” (Emphasis added).

To the extent that the Road Commission suggests that the ditches and culverts do not constitute a storm water drain system because they do not substantially redirect the flow of storm or surface water, which given the natural topography of the area would have migrated in a southeasterly direction even in the absence of any ditches or culverts, the natural topography simply has no relevance to the question whether a storm water drain system exists here, in conformity with the definition prescribed in *Linton*, 273 Mich App 117-121.² Furthermore, the

² Pionk’s opinion that the ditches and culverts did not amount to a system as defined by this Court focused on the definitionally irrelevant fact that storm or surface water would have migrated toward the southeast even without the ditches and culverts. Pionk summarized as follows at the evidentiary hearing:

Defense counsel: . . . Have you formed an opinion as to whether the ditches and two culverts that we have shown and measured on Exhibits 3 and 5 are a stormwater drainage system?

Pionk: Yes.

Defense counsel: And what is that opinion?

(continued...)

“storm water drain system” definition elaborated in *Linton* nowhere mandates that a system consist of officially designated county drains. Lastly, with respect to the Road Commission’s emphasis of the discrepancy between the approximate 1-mile area of storm water drain system here and the more extensive storm water drain system involved in *Jackson*, 270 Mich App 275, 286, we observe that *Jackson* does not control the storm water drain system analysis in this case. The Court in *Linton*, 270 Mich App 119, plainly referred to *Jackson* as “relevant for providing some instruction on whether the roadside drainage ditch here qualifies as a storm water drain system” (emphasis in original), not as containing any dispositive criteria concerning the requisite extensiveness of a system.³ The Court in *Linton*, 270 Mich App 120, subsequently phrased the question in this case as “whether the roadside drainage ditch at issue is, like the Jacobs Lake Drain [in *Jackson*], part of a system of connected drains, i.e., an assemblage or combination of drains that forms a complex or unitary whole,” but remanded for discovery whether “the roadside ditch [here] was part of a system of drains,” as the Court in *Linton* described in the governing definition of a “system.” *Id.* at 121. In summary, because the instant “system” is comprised of ditches and culverts that form or function as a unitary whole in conveying storm or surface water, the purported insignificance of the storm water drain system present in this case has no bearing on its identity as a “system,” as defined by this Court.

In conclusion, the circuit court properly denied the Road Commission’s motion for summary disposition on governmental immunity grounds because (1) the undisputed facts establish as a matter of law that the ditches and culverts at issue in this case qualified as a storm water drain system, (2) the storm water drain system involved here meets the statutory definition of “sewage disposal system” in MCL 691.1416(j), (3) this Court previously expressed that “if the trial court concludes on remand that the roadside drainage ditch was a sewage disposal system,

(...continued)

Pionk: That is not part of a stormwater drainage system.

Defense counsel: And what do you base that opinion on?

Pionk: I base that opinion on the use of a roadside ditch is to provide drainage for the base material of the roadway as well as the natural flow of the water within this area traversing in the southeasterly direction with or without a roadway.

* * *

Because the intent of the roadside ditches is to provide base drainage for the roadbed. With or without the roadway intersecting along that section line of Roseburgh Road, the general path of water is still in the southeasterly direction, therefore, I . . . my determination is that it is not part of a system for drainage.

³ The entirety of the Court’s “system” analysis in *Jackson*, 270 Mich App 285-286, quoted MCL 691.1417(2), then stated, “The plain language of the statute includes the drains at issue here in the definition of ‘sewage disposal system.’ MCL 691.1416(j). Therefore, the statute is applicable to the instant case, and defendants are immune unless the backup would be considered a sewage disposal system event (event).”

then it follows that the overflow and flooding that occurred here was a sewage disposal system ‘event,’” *Linton*, 273 Mich App 121, as defined in MCL 691.1416(k), and (4) the parties do not dispute that the portion of the storm water drain system that allegedly caused the water backup event here fell within the Road Commission’s jurisdiction and control, in other words that the Road Commission constituted “an appropriate governmental agency,” MCL 691.1417(2), as defined in MCL 691.1416(b). Consequently, the Lintons may attempt to prove the remaining elements of their claim in conformity with MCL 691.1417(3).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher