STATE OF MICHIGAN

COURT OF APPEALS

CHARLES WILLIAMS,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
February 25, 2010

No. 290255
Wayne Circuit Court
LC No. 08-014804-NO

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff fell on a paved walkway and injured his ankle. The walkway at issue runs immediately next to the river, parallel to Jefferson Avenue but separated from Jefferson by a wide field and a wire fence. Perpendicular paved walkways at either end connect the walkway with a sidewalk that is immediately adjacent to Jefferson, but there is no paved sidewalk adjacent to Jefferson where the field is located. Thus, a person walking along Jefferson must make a right-angle turn at each end of the field in order to stay on the pavement, which then leads the person over to the river, continues alongside the river, then right-angles back to Jefferson when the person reaches the other end of the field.

Plaintiff's complaint alleged that he "tripped over a defect which was on the sidewalk/ walkway adjacent to the River, parallel (100 yards south of) Jefferson west of 8th street approximately 230 feet and east of 10th street [sic]." All other references to the walkway in the complaint say "sidewalk." Defendant moved for summary disposition under MCR 2.116(C)(7). Plaintiff's response argued both that the walkway was a sidewalk and that it was a trailway and thus, the highway exception to governmental immunity applied. The trial court disagreed and granted defendant's motion for summary disposition.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation is a question of law that we also consider de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

The Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq*., controls these proceedings. It sets forth six exceptions to immunity. *Lash v Traverse City*, 479 Mich 180, 195 n 33; 735 NW2d 628 (2007). The "highway exception" holds that a governmental agency can be liable for damages caused by an unsafe highway. MCL 691.1402. Exceptions to immunity are to be narrowly construed. *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609, 614; 664 NW2d 165 (2003). Specifically, the highway exception to governmental immunity states:

> Except as otherwise provided in section 2a, each 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 or damage to his or her property 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 liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21. The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel.

In this case, there is no question that defendant is a governmental agency, that it was engaged in a governmental function, and that it had jurisdiction over the walkway. The only issue here is whether the walkway qualifies as a "highway" under the statutory definition. The cases cited by defendant, *Haaksma v Grand Rapids*, 247 Mich App 44; 634 NW2d 390 (2001), and *Stabley v Huron Clinton Metro Park Auth*, 228 Mich App 363, 368-369; 579 NW2d 374 (1998), support defendant's argument that this is not a "sidewalk" because it is not adjacent to the street. In *Stabley*, 228 Mich App at 367, this Court looked at dictionary definitions that variously defined "sidewalk" as being "along the side of a street," "along the side of a road," "at the side of a roadway," and "part of a public street or highway." This 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. 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*, 247 Mich App 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*. While there are no structures between the walkway here and the street, the photographs show it is quite far away, and there is a fence between it and the street. It more properly might be called a "riverwalk." It runs along the river, not along Jefferson Avenue.

In making his argument that the walkway is a trailway, plaintiff states that the walkway is within the definition provided in the Natural Resources and Environmental Protection Act (NREPA), at MCL 324.72101(g), which states, "'Trailway' means a land corridor that features a broad trail capable of accommodating a variety of public recreation uses." Plaintiff further argues that our Supreme Court looked to the Motor Vehicle Code to define terms in the GTLA in

Roy v Dep't of Transportation, 428 Mich 330, 338-340; 408 NW2d 783 (1987); looking to the NREPA would involve a similar analysis.

In response, defendant argues, without citing case support, that the modifier "on the highway" applies to all the structures listed in the statute. But that assertion is not in accord with case law construing similarly-structured statutes.

As this Court has noted, "The drafters of statutes are presumed to know the rules of grammar, and statutory language must be read within its grammatical context unless a contrary intent is clearly expressed." *Greater Bethesda Healing Springs Ministry v Evangel Bldrs & Constr Mgrs, LLC*, 282 Mich App 410, 414; 766 NW2d 874 (2009) (citing *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002)). "The 'last antecedent' rule of statutory construction provides that a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation." *Id*. Applying that rule to the statute here in question leads to the conclusion that "on the highway" modifies only "culverts." Accord, *Adell Broadcasting Corp v Apex Media Sales, Inc*, 269 Mich App 6, 10; 708 NW2d 778 (2005); *Twp of Homer v Billboards by Johnson, Inc*, 268 Mich App 500, 503; 708 NW2d 737 (2005).

Therefore, we hold that the proper interpretation of the definition provided by MCL 691.1401(e) does not limit defendant's liability only to trailways "on the highway," that is, adjacent to the road. The walkway where plaintiff fell fits the statutory definition of "trailway," and therefore the exception to immunity applies here. Defendant cannot avoid liability for injuries arising from its alleged negligent repair and maintenance of the walkway.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis