

STATE OF MICHIGAN
COURT OF APPEALS

LINDA PARKER,

Plaintiff-Appellee,

v

DOMINIC J. JACOBETTI HOME FOR
VETERANS,

Defendant-Appellant.

UNPUBLISHED
February 25, 2010

No. 290379
Court of Claims
LC No. 08-000089-MZ

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

PER CURIAM.

Defendant appeals as of right from the trial court's order denying its motion for summary disposition based on governmental immunity, MCR 7.216(C)(7). 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).

This case involves the "public building" exception to governmental immunity, MCL 691.1406. The only element in dispute is whether a dangerous and defective condition of the building itself existed. The facts are not in dispute. Plaintiff was injured when a portable loading ramp fell on her and crushed her foot. The ramp was used to assist in unloading trucks that were taller than the floor of the loading dock and that did not have their own ramps on board. The ramp had been leaned against a wall when a gust of wind caught it, causing it to fall. Pictures are attached to the briefs; the chains shown attached to the wall in some pictures, for securing the ramp to the wall when not in use, were added *after* the incident at issue.

Plaintiff's complaint alleged that this was a dangerous and defective condition of a public building. Defendant moved for summary disposition, arguing that the ramp was not a fixture or part of the building and that plaintiff did not give notice of the incident, as required by statute.

The trial court disagreed. The court applied the fixture analysis, under which "an item is a fixture if it's annexed to the realty, its adaptation or application to the realty is appropriate, and it was intended as a permanent accession to the realty." Although the ramp was not attached physically to the building, the court stated it could still be a fixture if it was "constructively annexed": "[C]onstructive annexation occurs when the item cannot be removed from the building without impairing the value of the building." The court found the ramp was "constructively annexed to the building given the fact that the service trucks needed the ramp,

and there was testimony that about 50 percent of the trucks needed the ramp in order to make their deliveries.” The court also found that the fact that defendant physically attached the ramp to the wall after the incident was evidence that defendant intended the ramp to be a permanent accession to the building. The court did not mention the second prong of the test. Nonetheless, the court found the elements of the exception were met.

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 trial court applied an incorrect analysis for fixtures and reached the wrong conclusion about the ramp in this case. There is no dispute that the ramp was not physically attached to the building at the time of the accident, so the only way it could be found to be a fixture is if it was “constructively annexed” to the building.

“[T]he fixtures analysis is limited to items of personal property that have a possible existence apart from realty [T]he term ‘fixture’ necessarily implies something having a possible existence apart from realty, but which may, by annexation, be assimilated into realty.” *Fane v Detroit Library Comm*, 465 Mich 68, 78; 631 NW2d 678 (2001), quoting *Wayne Co v Britton Trust*, 454 Mich 608, 614-615; 563 NW2d 674 (1997). The trial court identified the correct test: “An item is a fixture if (1) it is annexed to realty, (2) its adaptation or application to the realty is appropriate, and (3) it was intended as a permanent accession to the realty.” *Fane*, 465 Mich at 78. However, *Fane* further explains, “Constructive annexation occurs where the item cannot be removed from the building without impairing the value of *both the item and the building*.” *Id.* at 80 (emphasis added). The court identified and applied only half of the correct test. It made no finding that the value of the ramp would be impaired and there is no evidence to support such a conclusion. Nor did the court correctly conclude that the value of the building would be impaired by removing the ramp from it. The ramp could be removed and brought back any number of times with no loss of value to the building. The trial court’s conclusion would only be true if the ramp were *permanently absent* and no other ramp substituted. This is not the test identified in *Fane*.

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