STATE OF MICHIGAN

COURT OF APPEALS

BEVERLY DUFFY,

Plaintiff-Appellee,

v

DEPARTMENT OF NATURAL RESOURCES and STATE OF MICHIGAN,

Defendants-Appellants.

UNPUBLISHED
March 9, 2010

No. 289644
Court of Claims
LC No. 08-000094-MD

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order denying their motion for summary disposition based on governmental immunity, MCR 2.116(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 presents a question of purely statutory interpretation; the facts are not in dispute. Plaintiff was injured riding an all-terrain vehicle (ATV) on the Little Manistee Trail, which is operated by defendant Department of Natural Resources (DNR). Although in the trial court there was litigation over other elements, in this Court the only question is whether the statute excludes this trailway from defendants' duty to repair and maintain highways. The relevant statutes provide:

> MCL 691.1401: As used in this act:
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> * * *
>
> (c) "State" means the state of Michigan and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces and includes every public university and college of the state, whether established as a constitutional corporation or otherwise.
>
> * * *
>
> (e) "Highway" means 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.
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> MCL 691.1402(1): Except as otherwise provided in section 2a [limiting municipal liability], 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.* A judgment against the state based on a claim arising under this section from acts or omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer. [Emphasis added.]

As relevant to this appeal, the trial court found that the limited duty set forth in the highlighted, fourth sentence applied only to two agencies, "the state and county road commissions"—i.e., the state road commission and the county road commissions. All other agencies, including the DNR, have a duty to repair any "highway," as defined by MCL 691.1401(e), within their jurisdictions.

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). Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Statutory interpretation is a question of law that we also consider de novo. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

We conclude that the trial court erred in its interpretation the fourth sentence of MCL 691.1402(1). The trial court's reading granted immunity to a nonexistent governmental agency; there is no "state road commission" in Michigan. Moreover, the court's interpretation ignored the word "the" immediately preceding "county road commissions." The limited duty set forth in MCL 691.1402(1) applies to the state, as defined in MCL 691.1401(c), as well as to county road commissions.

We are then required to address the second part of the issue before us: whether the limited duty nonetheless extends to trailways as long as they are not "outside of the improved portion of the highway designed for vehicular travel."[1] The statute is confusingly worded, as was noted by our Supreme Court in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 167; 615 NW2d 702 (2000). There can be no real dispute that this is a trailway and that "trailways" are included in the definition of "highway" provided by MCL 691.1401(e). The debate is whether the phrase "outside of the improved portion . . ." modifies only "other installations" or if it modifies each of the preceding items: "sidewalks, trailways, and crosswalks." 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 *all* sidewalks, crosswalks, and trailways are excluded from the scope of defendants' duty, as well as any other installation outside of the improved portion of the highway.

Nor is a contrary intent clearly expressed. The word "trailways" was inserted into both of these statutes by the same enactment: 1999 PA 205. It is logical that the Legislature, when expanding the duty of municipalities by expanding the definition of "highway," would at the same time maintain the more limited duty of the state and the county road commissions to state and county roads, respectively. This is consistent with the conclusions of our Supreme Court in *Suttles v Dep't of Transportation*, 457 Mich 635, 644; 578 NW2d 922 (1998): "With the codification of governmental immunity in 1964, the highway exception was significantly narrowed and no longer allowed liability for the state and county for injuries incurred in three specific areas: (1) sidewalks, (2) crosswalks, or (3) any other installation outside the improved portion of the highway designed for vehicular travel." While *Suttles* was decided before the word "trailways" was added to the statute, it is significant how the Court broke down the three excluded areas. Notably, in the companion to *Suttles*, *Brown v Dep't of Transportation*, the plaintiff was injured while in a crosswalk that was clearly *within* the improved portion of the highway designed for vehicular travel—she was in the middle of the road when she was struck by a vehicle. The Court did not distinguish crosswalks that are within the improved portion of the highway from those outside the improved portion of the highway. The same analysis applies here. We therefore conclude that all trailways are excluded from the duty of the state and the county road commissions as set forth in MCL 691.1402(1).

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[1] The trial court did not need to address this question. However, consideration of the issue is necessary to a proper determination of the case, and the question is one of law concerning which the necessary facts have been presented. *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 640; 734 NW2d 217 (2007).

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

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood