

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES ALSTON,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

August 2, 2012

No. 304952

Wayne Circuit Court

LC No. 10-000410-NO

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

In this case involving the highway exception to governmental immunity, plaintiff appeals as of right from an order granting summary disposition to defendant. We affirm.

While defendant filed the motion under MCR 2.116(C)(7) (immunity granted by law) and (C)(8) (failure to state a claim), and the court did not expressly state that it was relying on subrule (C)(7) as the basis for granting summary disposition, the court relied solely on a finding that plaintiff's claim was barred by governmental immunity. In reviewing a motion for summary disposition under MCR 2.116(C)(7), this Court

must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [*Zwiers v Growney*, 286 Mich App 38, 42; 778 NW2d 81 (2009) (internal citations and quotation marks omitted).]

The standard of review for a question of statutory interpretation is de novo. *Weaver v Detroit*, 252 Mich App 239, 242; 651 NW2d 482 (2002) (*Weaver II*).

Plaintiff filed a lawsuit against defendant after a streetlight pole fell and struck him while he was crossing a street. Plaintiff argues that, in the context of this case (involving a municipality), the trial court erred in holding that a streetlight pole is not included in the

definition of “highway” for the purpose of the highway exception to governmental immunity, MCL 691.1402(1).

In *Weaver II*, *supra*, a special conflict panel of this Court considered the Court’s opinion in *Weaver ex rel Estate of Weaver v Detroit*, 249 Mich App 801; 642 NW2d 342 (2002) (*Weaver I*), wherein the Court disagreed with but followed the holding in *Ridley v Detroit (On Remand)*, 246 Mich App 687; 639 NW2d 258 (2001) (*Ridley I*), vacated 468 Mich 862 (2003). In *Ridley I*, 246 Mich App at 691-692, this Court held that a streetlight pole was part of a “highway.” The conflict panel in *Weaver II* determined that a streetlight pole was not part of the definition of “highway” found in former MCL 691.1401(e),¹ reasoning as follows:

[W]e conclude that the highway exception to governmental immunity does not apply here because a streetlight pole is not part of the “highway.” . . . We agree with the *Weaver I* panel and hold that, as with traffic signals and signs, . . . the plain language of the statute does not support the conclusion that streetlight poles are included within the definition of the term “highway.” *Weaver I*, [249 Mich App] at 804. Accordingly, we reject as inconsistent with the plain language of the statute the holding in *Ridley [I]* that a streetlight pole is part of the “highway” because it is not specifically excluded from the definition of “highway” in MCL 691.1401(e). [*Weaver II*, 252 Mich App at 245-246.]

In *Ridley v Detroit (On Second Remand)*, 258 Mich App 511, 515-516; 673 NW2d 448 (2003) (*Ridley II*), the Court followed the precedent set by the conflict panel in *Weaver II*.

Here, plaintiff asserts that the injury was caused by improper maintenance of the streetlight pole. He argues that, while state and county road commissions have restricted liability, all other government entities (including Detroit) are liable for injuries arising out of the failure to maintain all components of the highway, including installations outside the improved portion of the highway such as a streetlight pole. However, this Court must follow the binding precedent of *Weaver II*. MCR 7.215(J)(6). Thus, the highway exception does not apply and the trial court’s ruling was correct. Given this disposition, we need not address whether defendant had notice of the defect.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

¹ The definition of “highway” is now contained in MCL 691.1401(c). The changes in the statutory placement and wording are not material to our analysis today.