

STATE OF MICHIGAN
COURT OF APPEALS

JOHN H. WINTERS,

Plaintiff–Appellant,

v

GRATIOT COMMUNITY AIRPORT,

Defendant–Appellee.

UNPUBLISHED

July 19, 1996

No. 183071

LC No. 93-002556-NO

Before: Neff, P.J., and Fitzgerald and C.A. Nelson,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order granting summary disposition to defendant pursuant to MCR 2.116(C)(7) based on governmental immunity. Plaintiff brought this suit based on an injury that he suffered on the premises of defendant’s airport. We affirm.

First, we disagree with plaintiff’s contention that his claim, viewed in the light most favorable to him, *Codd v Wayne Co*, 210 Mich App 133, 134-135; 537 NW2d 453 (1995), fell within the public building exception to governmental immunity. Plaintiff’s injuries from falling down the stairway were not proximately caused by any structural defect in the airport building.

Had the hallway light been turned on, there would have been no reasonable possibility that plaintiff would have walked past the restroom and fallen down the open stairway. *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995). Failure to have the hallway light operating was a transitory condition and, thus, outside the public building exception. *Wade v Dep’t of Corrections*, 439 Mich 158, 168; 483 NW2d 26 (1992). Even if differences in the building’s structure, such as a continuously operating light in the hallway, would have prevented plaintiff’s fall, the absence of such features cannot be considered a proximate cause of his injuries inasmuch as such measures could not have been reasonably foreseen as necessary under the circumstances of this case. *Jackson v Detroit*, 449 Mich 420, 428; 537 NW2d 151 (1995); *Berry v J & D Auto Dismantlers Inc*, 195 Mich App 476, 483-484; 491 NW2d 585 (1992).

Next, contrary to plaintiff's contention, summary disposition was appropriate in this case before the expiration of the previously determined discovery period. Further discovery did not stand a fair chance of uncovering factual support for plaintiff's position. *Crawford v State of Michigan*, 208 Mich App 117, 122-123; 527 NW2d 30 (1994). Based on the simple facts presented in plaintiff's own deposition, his injuries were not proximately caused by any factor actionable under the public building exception.

Lastly, plaintiff's argument that defendant's operation of the airport may have been a proprietary function outside the scope of governmental immunity was not properly preserved below as it was not raised until he brought a motion for reconsideration that was not based on a change in the law. *Michigan National Bank v Mudgett*, 178 Mich App 677, 681; 444 NW2d 534 (1989). Regardless, plaintiff has alleged no facts warranting the application of the proprietary function exception because he has not produced evidence that defendant was (1) operating the airport primarily for the purpose of producing a pecuniary profit and (2) that defendant's operation of the airport was not normally supported by taxes and fees. *Codd, supra* at 134-135. The trial court, in dismissing plaintiff's complaint with prejudice, did not abuse its discretion by implicitly barring him from filing an amended complaint alleging the proprietary function exception. In addition to the fact that he should have raised this argument earlier, he was able to bring this argument to the trial court's attention in his motion for reconsideration. Cf. *Codd, supra* at 137.

Affirmed.

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald

/s/ Charles A. Nelson