

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT TURPIN, Personal Representative of the
ESTATE OF DAWN MARIE TURPIN, and LINDA
FRANCO,

UNPUBLISHED
May 2, 1997

Plaintiffs-Appellees,

v

No. 194511
Allegan Circuit Court
LC No. 93-16621-NO

FRED O. NEILS,

Defendant-Appellant,

and

ALLEGAN COUNTY ROAD COMMISSION
and DELWIN L. REDDER,

Defendants/Third-Party
Plaintiffs-Appellants,

and

CHRISTINE LYNN KING,

Third-Party Defendant.

Before: Griffin, P.J., and Doctoroff and Markman, JJ.

MEMORANDUM.

Defendants appeal on leave granted by the Supreme Court a lower court order denying defendants' motion for summary disposition. We reverse in part and remand in part.

Plaintiffs sued defendant Allegan County Road Commission and individual defendants Fred O. Neils and Delwin L. Redder for injuries sustained when the car they were riding in swerved and struck a

guardrail. Plaintiffs claim that the guardrail is located on the “portion of the highway designed for vehicular travel” and, thus, included within the highway exception to governmental immunity, MCL 691.1402; MSA 3.996(102). The trial court denied defendants’ motion for summary disposition on the basis that “no Michigan case has held that a guardrail, as a matter of law, is considered to be outside the improved portion of the highway designed for vehicular travel.”

Defendant road commission claims that the trial court erred in failing to grant summary disposition on the basis of governmental immunity, MCL 691.1407(1); MSA 3.996(107)(1). We agree. In *Chaney v Dep’t of Transportation*, 447 Mich 145; 523 NW2d 762 (1994), a majority of the justices on our Supreme Court held that guardrails are not a part of the improved portion of the highway designed for vehicular travel. *Zwolinski v Dep’t of Transportation (After Remand)*, 210 Mich App 496, 498; 534 NW2d 163 (1995). Thus, guardrails do not fall within MCL 691.1402; MSA 3.996(102), the narrow highway exception to governmental immunity. Defendant road commission is therefore entitled to summary disposition in its favor.

In regard to individual defendants Neils and Redder, the lower court did not rule on plaintiffs’ claims of alleged gross negligence. Because, as a general rule, we will not reverse absent a ruling by the lower court, *Young v Young*, 211 Mich App 446, 457, n 2; 536 NW2d 254 (1995), we remand to the circuit court for a ruling on plaintiffs’ claims of gross negligence against the individual defendants.

Reversed in part and remanded in part. We do not retain jurisdiction. Defendant road commission may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin
/s/ Martin M. Doctoroff
/s/ Stephen J. Markman