

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF DANYEL ALYCE OMAR,

UNPUBLISHED
February 17, 1998

Plaintiff-Appellant,

v

No. 196968
Oakland Circuit Court
LC No. 95-505516-NO

CITY OF OAK PARK,

Defendant-Appellee.

Before: Sawyer, P.J., and Wahls and Reilly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the grant of defendant's motion for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10). We affirm.

This claim arises out of the tragic accident which occurred as decedent Danyel Alyce Omar was crossing Coolidge Highway on her way to Roosevelt Middle School in the City of Oak Park. Decedent was crossing Coolidge from west to east, north of Capital Street, on foot. While crossing Coolidge, decedent was struck by a car driven by an uninsured motorist. Decedent was pronounced dead at the scene of the accident. She was nine years old.

The intersection of Coolidge and Capital contained a normally functioning traffic signal. Plaintiff argues on appeal that the trial court erred in granting summary disposition to defendants. Although summary disposition was granted on several claims, plaintiff only appeals the trial court's grant of summary disposition on its claim that defendant was negligent in failing to post a crossing guard at the intersection.

In determining whether a plaintiff's claim is barred by immunity granted by law under MCR 2.116(C)(7), a court must consider all documentary evidence filed or submitted by the parties. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 133; 545 NW2d 642 (1996). The court accepts well-pleaded allegations as true and construes them in a light most favorable to the nonmoving party. *Id.* at 134. To survive a motion for summary disposition, brought under MCR 2.116(C)(7), the plaintiff must allege facts warranting the application of an exception to governmental immunity. *Id.* at 134-135.

Plaintiff argues that defendant was negligent in failing to post a crossing guard at the intersection of Coolidge and Capital despite its knowledge of its hazardous condition for school children. Generally, governmental agencies are immune from tort liability when engaged in a governmental function. *Mason v Wayne Co Bd of Comm'rs*, 447 Mich 130, 134; 523 NW2d 791 (1994), amended 451 Mich 1236; 549 NW2d 575 (1996); MCL 691.1407(1); MSA 3.996(107)(1). However, the defective highway exception to governmental immunity, MCL 691.1402(1); MSA 3.996(102)(1), imposes a duty on governmental agencies to maintain highways under their jurisdiction in reasonable repair so that they are reasonably safe and convenient for public travel. The defective highway exception to governmental immunity imposes a duty on defendant to maintain Coolidge “in reasonable repair so that it is reasonably safe and convenient for public travel.” However, the highway exception specifically extends “only to the improved portion of the highway designed for vehicular travel and shall not include sidewalks, crosswalks, or any other installation outside of the improved portion” of the highway designed for vehicular travel. *Mason, supra* at 135-136 (emphasis omitted). This sentence excludes from the highway exception those installations that narrowly service the unique needs of pedestrians. The explicit removal of exclusively pedestrian installations from the highway exception can be interpreted to mean that “[p]edestrians who trek upon Michigan highways must and do venture beyond the protective mandates of MCL 691.1402(1); MSA 3.996(102)(1).” *Mason, supra* at 137. The idea underlying the highway exception is that drivers of vehicles should not have to worry about what surprises lie ahead and rather should concentrate on the traffic. *Mason, supra* at 137-138.

Providing a crossing guard at the intersection of Coolidge and Capital only benefits pedestrians. Because pedestrian use does not fall within the highway exception to governmental immunity, we find that the trial court did not err in granting defendant’s motion for summary disposition. Defendant was immune from tort liability because it was engaged in a governmental function and plaintiff’s allegation that a crossing guard should have been provided does not fall within one of the narrowly drawn exceptions to governmental immunity.

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Maureen Pulte Reilly