

STATE OF MICHIGAN
COURT OF APPEALS

DELORES J. WHITE,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED

May 5, 1998

No. 199918

Court of Claims

LC No. 96-016376 CM

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant, predicated on governmental immunity, in this action for personal injuries suffered when plaintiff, while on foot, tripped and fell in a pothole on a highway under defendant's jurisdiction. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As the Michigan Supreme Court said in *Mason v Wayne Co Bd of Comm'rs*, 447 Mich 130, 137; 523 NW2d 791 (1994), amended 451 Mich 1236; 549 NW2d 575 (1996), "[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)." Plaintiff's attempt to distinguish *Mason* on the basis that in that case the pedestrian in question was crossing within a crosswalk, for which an express exclusion is found in the governmental immunity statute, is without merit, because as this Court noted in *Suttles v Dep't of Transportation*, 216 Mich App 166, 171; 548 NW2d 671 (1996), the *Mason* Court further commented that pedestrians crossing outside crosswalks face the additional hurdle of comparative negligence. That plaintiff was crossing the highway outside a crosswalk, therefore, does not establish a basis for imposing liability notwithstanding governmental immunity, but rather affords defendant an additional defense if, for some other reason, governmental immunity were not applicable. Because immunity is applicable and is a complete defense under these circumstances, comparative negligence need not, of course, be considered.

* Circuit judge, sitting on the Court of Appeals by assignment.

We affirm.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka