STATE OF MICHIGAN

COURT OF APPEALS

HAZEL A. STAFFORD,

Plaintiff-Appellant/Cross-Appellees,

v

LIVINGSTON COUNTY SHERIFF, LIVINGSTON COUNTY SHERIFF'S DEPARTMENT and LIVINGSTON COUNTY,

Defendant-Appellees/Cross-Appellants.

UNPUBLISHED
June 16, 1998

No. 202287
Livingston Circuit Court
LC No. 95-014658-NI

Before: Markey, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Plaintiff Hazel Stafford appeals and defendants cross-appeal from the trial court's grant of summary disposition in favor of defendants in this slip and fall case that occurred on the outside steps leading to defendant Livingston County Sheriff's Department. We affirm.

The material facts are not in dispute. Defendant Livingston County owns the Livingston County Jail, and defendant Livingston County Sheriff operates the jail. Defendant Sheriff's Department is also located in this jail. The Livingston County Jail building was constructed in 1970 and features a raised cement terrace approximately twenty feet long and almost eight feet wide directly in front of the doors leading into the building. Three six-inch steps lead from the parking lot level to the terrace level on all three sides. Thus, to enter this side of the building, one must climb three steps onto the terrace. Alternatively, one could use the handicap ramp that was added to the building and that replaced almost five feet of steps on one side of the terrace.

On the day in question, plaintiff, who was then sixty-seven years old, visited defendant Sheriff's Department with her son to obtain some accident photographs. As plaintiff walked out of the building and began descending the three steps, she slipped and fell, injuring her head, right knee and left hand.[1] Plaintiff subsequently filed suit alleging that she fell because there was no handrail on the steps in front of defendant Sheriff's Department. She also alleged that defendants' failure to install handrails on the steps

constituted a breach of the duty of ordinary care and violated the basic building code of the Building Officials and Code Administrators International, Inc. (BOCA).

The trial court dismissed plaintiff's complaint pursuant to defendants' motion for summary disposition under MCR 2.116(C)(10), finding no case law support for the proposition that the absence of a handrail is negligence per se or that it constitutes a "defective condition" without some other aggravating circumstances. The court concluded as follows:

> In the case at bar, plaintiff asserts that the stairs in question are defective because they do not possess a handrail. This court finds that plaintiff has pled absolutely nothing unique in character or appearance about the steps at issue. Plaintiff entered the building using the very steps she now alleges were defective. Upon casual inspection, plaintiff could have and should have realized that there was no handrail on the steps. *If* the steps *were* defective, plaintiff could have and should have realized the defect and should have taken appropriate care to avoid the steps. An average user with ordinary intelligence would have discovered any danger. Again, this Court finds nothing in the pleadings to support the allegation that the steps were unreasonably dangerous, that there were any unique circumstances, or that the steps were defective. Plaintiff had actual knowledge of the condition of the steps having recently entered the building using the same route. By plaintiff's own admission she misstepped and fell. Unless the absence of a handrail is negligence per se, and this court cannot find a case to support such a proposition, defendant[s'] motion for summary disposition must be granted. The steps at issue are of the every day variety which possess no special aspect or characteristic. [Emphasis in original.]

In its written opinion and order, however, the trial court did not address the issue of governmental immunity or the public building exception to governmental immunity,[2] although it did conclude on the record that the BOCA did not require defendants to add handrails to the terrace when defendants added the handicap ramp: "[t]his is as opposed to a situation where a major renovation to the whole building is being done which we might then consider a reconstruction [under BOCA that requires a previously existing yet nonconforming structure to satisfy BOCA specifications], but I don't think that adding the ramp there in fact triggered the BOCA."

I

As its first issue on cross-appeal, defendant argues that although the trial court did not rule on the issue of whether the public building exception to governmental immunity applied, the court could have granted summary disposition on this ground because the steps outside defendants' building were unrelated to the building's permanent structure. In light of the recent ruling in *Horace v City of Pontiac*, 456 Mich 744, 754-758; 575 NW2d 762 (1998), we agree.

Although the trial court did not address this issue, we do because it involves a question of law and the facts necessary to resolve the issue exist on the record. *Miller v Bock*, 223 Mich App 159,

168; 567 NW2d 253 (1997); *Carson Fisher Potts and Hyman v Hyman*, 220 Mich App 116, 119; 559 NW2d 54 (1996).

Upon reviewing the record, we believe that the terrace and stairs leading to defendant Livingston County Sheriff's Department are not a part of that public building and are ineligible for consideration under the public building exception to governmental immunity. *Horace, supra* at 754-757. The public building exception to governmental immunity, MCL 691.1406; MSA 3.996(106), states as follows:

> Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition.

Thus, a party asserting that a governmental agency is liable for injuries she sustained must show a defect, the agency's actual or constructive knowledge of the defect, and the agency's failure to act within a reasonable time. *Hickey v Zezulka (On Resubmission)*, 439 Mich 408, 421 (Brickley, J), 447 (Riley, J); 487 NW2d 106 (1992).

It is well established that the statutory exceptions to governmental immunity are to be narrowly construed. *Horace, supra* at 749. Moreover, our Supreme Court has very recently observed that "[i]t requires a broad, rather than narrow, reading of the building exception to find that the building exception applies to anything but the building itself." *Id*. at 754. We must, therefore, engage in a narrow reading of the exception.

Plaintiff relies on *Maurer v Oakland Co Parks and Recreation Dept (On Remand)*, 201 Mich App 223, 229; 506 NW2d 261 (1993), which our Supreme Court reversed in *Bertrand v Alan Ford, Inc.*, 449 Mich 606; 537 NW2d 185 (1995),[3] for the proposition that steps leading up to a public building may constitute a dangerous or defective condition of a building so as to warrant the application of the public building exception. This reliance is now clearly misplaced.

Our Supreme Court in *Horace, supra* at 754-755, specifically stated that once it overruled *Maurer* on the open and obvious danger issue, "no rule of law remained from the Court of Appeals opinion. The Court of Appeals statements regarding the building exception became no more than dictum upon this Court's reversal under the open and obvious danger doctrine." *Id.* at 754. Thus, we will not and may not look to *Maurer*, and its treatment of stairs adjoining a building for purposes of applying the public building exception to governmental immunity.

In *Horace*, our Supreme Court further held that the public building exception did not apply where the plaintiff fell after passing through the turnstiles at the Pontiac Silverdome but before she reached the stadium doors. Finding summary disposition was properly granted, the Supreme Court

held that "[a] danger of injury caused by the area *in front of an entrance or exit* is not a danger that is presented by a physical condition of the building itself. As previously explained, the Court of Appeals reliance on *Maurer* was misplaced." *Id.* at 757 (emphasis added). In the case at bar, plaintiff fell after she exited defendants' building and began to walk down the three steps from the terrace to the parking lot. We find, therefore, that the steps where plaintiff fell did not constitute a danger presented by a physical condition of defendants' building itself.

Because governmental immunity precludes plaintiff's premises liability case against these defendants, we need not address the other issues plaintiff raises on appeal.

We affirm.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Stephen J. Markman

[1] Notably, the record is silent regarding where plaintiff's son was located when plaintiff was walking down the steps.

[2] We note, however, that during the first of two hearings on defendants' motion for summary disposition, plaintiff argued that this Court has held that steps leading out of a building under a porch overhang are part of the building under the public building exception. *Maurer v Oakland Co Parks and Recreation Dept (On Remand),* 201 Mich App 223, 229; 506 NW2d 261 (1993), which our Supreme Court reversed in part in *Bertrand v Alan Ford, Inc.*, 449 Mich 606; 537 NW2d 185 (1995). To this, the trial court responded "I really don't have a problem with that. I believe the steps are part of the building." Even if this comment were intended to resolve the entire public building exception issue, it was not reiterated in the trial court's opinion and order.

[3] *Bertrand, supra*, reversed *Maurer, supra*, on a ground unrelated to the public building exception, but plaintiff relies on *Maurer's* public building exception analysis on appeal.