STATE OF MICHIGAN

COURT OF APPEALS

FRANK W. ANDERSON, Personal Representative of the Estate of DOROTHY ANDERSON,

Plaintiff-Appellant/Cross-Appellee,

v

JACKSON COUNTY,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED

No. 203225
Jackson Circuit Court
LC No. 96-076330 NO

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

O'CONNELL, P.J. (concurring in part and dissenting in part.)

I concur with the majority opinion in affirming the trial court's grant of summary disposition on the failure-to-warn theory, but I respectfully dissent from the decision to reverse and remand on the issue of whether defendant breached a duty to exercise reasonable care to remedy a danger. I conclude that the trial court's dismissal of plaintiff's case may be affirmed in its entirety on the ground that governmental tort immunity insulates defendant from liability under plaintiff's allegations.[1]

This case is controlled by the recent Supreme Court decision in *Horace v City of Pontiac,* 456 Mich 744; 575 NW2d 762 (1998).[2] "[S]lip and fall injuries arising from a dangerous or defective condition existing in an area adjacent to an entrance or exit, but nevertheless still not part of a public building, do not come within the public building exception to governmental immunity." *Id.* at 758. *Horace* makes clear that defects in walkways and sidewalks adjacent to, or leading into, public buildings generally do not constitute defects in the buildings themselves. *Id.* at 757. Further, *Horace* expressly disapproved of this Court's reasoning in *Maurer v Oakland County Parks & Recreation (On Remand),* 201 Mich App 223; 506 NW2d 261 (1993), rev'd sub nom *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), that because steps leading directly to the entrance to a park restroom were "intimately associated or connected" with, and "related to the permanent structure or physical integrity" of, the public building itself, those steps were part of the building for purposes of applying the public-building exception to tort immunity. *Horace, supra* at 753-754, citing *Maurer, supra* at 229. According to *Horace*, for a defect or condition to come under the public-building exception to governmental tort immunity, the defect must be "of the building itself," the word "of" being

used in the sense of "to indicate possession." *Id.* at 756 (citations omitted). Thus, outside stairs, along with outside walkways, ordinarily will not be considered part of the public buildings to which they lead.

In the present case, the majority opinion quotes plaintiff's expert's observation that "the sidewalk and surrounding ground had subsided six or seven inches."[3] Indeed, there is no dispute that the allegedly dangerous condition stemmed from a defect in the sidewalk adjacent to the stairs. *Horace* makes it clear that liability premised on the public-building exception "does not extend to walkways . . . in front of an entrance or exit . . . ." *Id.* at 757. Accordingly, I would affirm the trial court on the alternative grounds, urged by defendant on cross-appeal, that the alleged defect was in the sidewalk, not the stairs. However, even if the defect in question must be characterized as pertaining to the stairs instead of to the sidewalk, the action remains nonetheless barred in light of *Horace*'s pronouncement 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," *id.* at 757, including when the area in front of an entrance is occupied by stairs, *id.* at 753-756.

While the majority may be able to distinguish this case from *Horace*, I cannot. For the reasons stated in *Horace*, I would affirm the decision of the trial court in its entirety.

/s/ Peter D. O'Connell

[1] Although the trial court dismissed the case on other grounds, this Court will not reverse when the trial court reaches the correct result regardless of the reasoning employed. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997). See also *Porter v Royal Oak*, 214 Mich App 478, 488; 542 NW2d 905 (1995) (upholding a correct ruling originally reached for the wrong reason).

[2] Both plaintiff's and defendant's briefs were filed prior to the Supreme Court's decision in *Horace*.

[3] I note that the physical irregularity alleged here is of very similar kind and extent as that which the Supreme Court regarded as unactionable under the open and obvious doctrine in *Maurer*, "a seven-inch drop between two steps," *Horace, supra* at 753, 755.