

STATE OF MICHIGAN  
COURT OF APPEALS

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KIRK KITCHEN,

Plaintiff-Appellant,

v

CITY OF YPSILANTI,

Defendant-Appellee.

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UNPUBLISHED

March 23, 1999

No. 204441

Washtenaw Circuit Court

LC No. 96-003595 NO

Before: O’Connell, P.J., and Jansen and Collins, JJ.

MEMORANDUM.

Plaintiff appeals of right from the trial court order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained injuries when the wheel of his bicycle struck a cable that was strung across an entranceway to Riverside Park. Plaintiff filed suit, alleging that defendant breached its duty to maintain the entranceway in a reasonably safe condition, and that he was entitled to recover under the highway exception to governmental immunity, MCL 691.1402; MSA 3.996(102). Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that the highway exception did not apply because the entranceway was not open for public travel, and thus was not a highway within the definition of that term. MCL 691.1401(e); MSA 3.996(101)(e). The trial court granted the motion, finding that the entranceway was not a highway as that term was defined.

We review a trial court’s decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

We affirm the decision of the trial court. MCL 691.1402(1) provides that a governmental agency having jurisdiction over a highway is required to “maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1401(e) defines “highway” as “every public highway, road, and street which is open for public travel and shall include . . . sidewalks . . .” Structures such as sidewalks, crosswalks, and paths fall within the highway exception only if they are adjacent to the highway. *Stabley v Huron-Clinton Metropolitan Park Authority*, 228 Mich App

363, 368-369; 579 NW2d 374 (1998). The entranceway was not adjacent to the public road fronting the park, and was not open to public travel. Finally, even if the entranceway could be deemed to be a highway, liability would not attach under the circumstances of the instant case. The duty to maintain a public highway is suspended while the highway is being repaired or improved. The suspension of the duty is accomplished by closing the highway to public travel. *Grounds v Washtenaw Co Rd Comm'n*, 204 Mich App 453, 456; 516 NW2d 87 (1994). Here, the entranceway was closed on a permanent basis. The cable was permanently erected across the entranceway, and was removed twice yearly for public events for limited periods of time. Plaintiff's injury did not occur during either period. No error occurred.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins