

STATE OF MICHIGAN
COURT OF APPEALS

JEAN M. MCDONALD,

Plaintiff-Appellee,

v

BOARD OF TRUSTEES OF MICHIGAN STATE
UNIVERSITY,

Defendant-Appellant.

UNPUBLISHED

November 12, 1999

No. 198022

Court of Claims

LC No. 95-015859 CM

ON REMAND

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

This case is on remand from the Supreme Court for reconsideration in light of *Horace v City of Pontiac*, 456 Mich 744; 575 NW2d 762 (1998). We again affirm.

This case arose out of an injury suffered by plaintiff when she fell on steps at Brody Hall, a residence hall, at Michigan State University. Plaintiff was exiting the building through the southwest doors on June 23, 1994 at about 9:30 p.m. after giving a speech there. The southwest doorway includes an overhang and a porch that are attached to the building. The porch is comprised of a granite slab immediately adjacent to the doors. The granite slab is a six-inch step up from a cement walkway. Plaintiff proceeded through the doorway of the residence hall and walked approximately fourteen feet on the cement walk to the top of a set of four stairs. When plaintiff reached the top of the stairs, the heel of her shoe became stuck in a hole in the cement and she fell forward. Plaintiff struck her face on the cement and fractured her nose. Other undisputed facts indicate that it was raining and dark when plaintiff was leaving and the area was not lit. Plaintiff filed suit in this slip and fall case alleging that the public building exception to governmental immunity applied. MCL 691.1406; MSA 3.996(106).

The trial court denied defendant's motion for summary disposition when defendant asserted immunity contending that the public building exception did not apply because the steps on which plaintiff fell were outside of the building. The trial court found that the cement walkway on which plaintiff fell was part of the building. The case proceeded to a bench trial, with a judgment in favor of plaintiff. We subsequently affirmed the trial court's judgment, finding none of the three issues raised by defendant to

require reversal. *McDonald v Bd of Trustees of Michigan State Univ*, unpublished opinion per curiam of the Court of Appeals, issued April 14, 1998 (Docket No. 198022).

Defendant moved for a rehearing in this Court contending that our decision was erroneous in light of *Horace*, which had been decided on April 7, 1998. The decision in *Horace* concerned only the issue of whether the area in which plaintiff fell was a part of the building so that the public building exception to governmental immunity applied. Thus, defendant's motion for rehearing did not challenge the other two issues defendant raised in its appeal of right. Defendant's motion for rehearing was denied by this Court in an unpublished order issued on June 25, 1998. Defendant subsequently applied for leave in the Supreme Court, and the Court remanded the case to this Court for reconsideration in light of *Horace*.

The majority in *Horace*, *supra*, p 758, recited its holding as "slip and fall injuries arising from a dangerous or defective condition existing in an area adjacent to an entrance or exit, but nevertheless still not a part of a public building, do not come within the public building exception to governmental immunity." The fact situation in *Horace* was that the plaintiff fell in a hole or crack in the asphalt on a descending walkway while proceeding toward the south entrance of the Pontiac Silverdome, approximately eighteen to twenty-eight feet from the entrance doors. The fact situation in the companion case, *Adams v Dept of State Hwys & Transportation*, was that the plaintiff fell in a hole on the cement walkway to the entrance of a building at a rest area located off I-75. The Court held that neither of these dangerous or defective conditions were presented by physical conditions of the buildings themselves.

The issue in the present case is whether the area in which plaintiff fell was part of the building. We agree with the trial court that it is. In reviewing the photographs submitted by the parties, we find that the stairs and walkway leading to the elevated doorway are part of the building itself. This is not a situation where the cement walkway is not connected to, or part of, the physical structure of the building as was the case in *Horace* and *Adams*. In fact, the majority in *Horace* directly acknowledged that some stairs "may fit the test we adopt today if they are truly part of the building itself" while noting a hypothetical situation of stairs leading up to or down from an elevated building entrance. *Horace*, *supra*, p 757, n 9. This is exactly the factual situation in this case where the stairs and walkway are leading up to and down from an elevated building doorway and are directly connected to the building. Thus, the area in which plaintiff fell is part of the building and the public building exception to governmental immunity applies.

Accordingly, we do not find the decision in *Horace* to compel a different result and we affirm the trial court's judgment in favor of plaintiff.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage