STATE OF MICHIGAN

COURT OF APPEALS

AGNES BRAMLETT,

Plaintiff-Appellant,

v

MARY KATHRYN RENAUD,

Defendant,

and

COUNTY OF WAYNE,

Defendant-Appellee.

UNPUBLISHED
June 6, 2000

No. 210574
Wayne Circuit Court
LC No. 97-701651 NI

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals by leave granted a trial court order granting defendant Wayne County summary disposition with respect to plaintiff's negligence claims. We affirm.

Plaintiff was injured when defendant Renaud[1] failed to obey a traffic signal and made a left turn in front of plaintiff. Plaintiff sued Wayne County alleging that the intersection was unsafe for vehicular travel because defendant should have installed a left turn lane and signal.

We review de novo the trial court's ruling on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court did not specify whether it granted Wayne County's motion pursuant to MCR 2.116(C)(7) or (C)(10). A motion under MCR 2.116(C)(10) tests a claim's factual support. A court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists to warrant trial. *Id*. A (C)(7) motion will be granted when the available pleadings and other documentary evidence demonstrate that recovery in tort is barred by governmental immunity. *Harrison v Director, Dep't of Corrections*, 194 Mich App 446, 449; 487 NW2d 799 (1992).

Governmental agencies are generally immune from tort liability for actions undertaken in furtherance of a governmental function. MCL 691.1407(1); MSA 3.996(107)(1); *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 618; 363 NW2d 641 (1984). A statutory exception exists concerning public highways. An injured party may hold the responsible governmental agency liable for its failure to maintain "the improved portion of the highway designed for vehicular travel" "in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1); MSA 3.996(102)(1). The highway exception contemplates a governmental duty to provide adequate warning signs or traffic control devices at known points of hazard, which constitute "any condition[s] that directly affect[] vehicular travel on the improved portion of the roadway so that such travel is not reasonably safe." *Pick v Szymczak*, 451 Mich 607, 619, 623; 548 NW2d 603 (1996).

Plaintiff has failed to demonstrate that the intersection where the accident occurred constituted a point of hazard. We discern no unusual or unique characteristic about the intersection that directly affects vehicular travel. No obstructions of view or other potential points of hazard appear within the photographs or other evidence of record, and the intersection possesses a functioning, standard three-light traffic signal. *Pick*, *supra* at 623, n 15 ("We expressly refute plaintiffs' implied claim that all crossroads intersections intrinsically qualify as points of hazard."); *Helmus v Dep't of Transportation*, 238 Mich App 250, 253-254; 604 NW2d 793 (1999);[2] *Wechsler v Wayne Co Rd Comm'n*, 215 Mich App 579, 595; 546 NW2d 690 (1996) ("Ordinary intersections on flat terrain are not points of 'special hazard,' for which the duty to maintain highways in a condition reasonably safe and fit for public travel imports an obligation to install extraordinary traffic-control devices beyond common stop signs or stop lights."), remanded 455 Mich 863; 567 NW2d 252 (1997).[3]

Even assuming, as plaintiff argues, that the intersection represents a point of hazard because it is heavily traveled and many accidents have occurred there, plaintiff has failed to show that the signal defendant erected was inadequate to warn drivers of the possibility of danger inherent in traversing the intersection. It is undisputed that the traffic signal was functioning properly at the time of the instant accident, and that the accident occurred after both plaintiff and Renaud entered the intersection on yellow or red lights. Reasonable minds could not differ as to whether the traffic light gave drivers adequate notice of the condition. See *Helmus*, *supra* at 254 ("A reasonably prudent driver ascertains whether oncoming traffic has cleared and whether cross-traffic is obligated to stop before entering an intersection."); *Paddock v Tuscola & Saginaw Bay Ry Co, Inc*, 225 Mich App 526, 537; 571 NW2d 564 (1997) ("When facts bearing upon proximate cause are not in dispute and reasonable persons could not differ about application of the legal concept of proximate cause to those facts, the court determines the issue."). Plaintiff does not argue that the signal was deficient or that a driver could not have safely negotiated the intersection. We reject plaintiff's suggestion that due to inadequate traffic signals the road was not reasonably safe for vehicular travel given that, had both drivers obeyed the light, this accident would not have occurred. Because the accident would not have happened had the drivers in this case complied with the traffic signal, we find the signal adequate to render the road reasonably safe for vehicular travel.[4]

To the extent that plaintiff further argues that her expert would have established what could have been done to make the intersection safer, we observe that it is not within the province of this Court to

determine whether a left turn lane or light might have made the intersection safer. *Helmus*, *supra* at 254-255; *Wechsler*, *supra* at 590-594.[5] Moreover, plaintiff utterly failed to substantiate what the expert's testimony may have been by either attaching an affidavit or deposition testimony. Finally, we note that plaintiff fails to explain why drivers who fail to heed current traffic control devices would more carefully observe more sophisticated traffic control devices.

Because the undisputed facts establish that the intersection did not constitute an unusual point of hazard and that defendant otherwise satisfied its obligation to make the intersection reasonably safe for vehicular travel by installing a three-light traffic signal, defendant was entitled to summary disposition pursuant to MCR 2.116(C)(7). MCL 691.1402(1); MSA 3.996(102)(1); *Codd v Wayne Co*, 210 Mich App 133, 134-135; 537 NW2d 453 (1995). Because reasonable minds could not differ with respect to whether any action by defendant proximately caused plaintiff's injuries, summary disposition was also appropriate pursuant to MCR 2.116(C)(10). *Paddock*, *supra*.

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ William C. Whitbeck

[1] Renaud was dismissed by stipulation of the parties.

[2] The *Helmus* Court distinguished the intersection there involved with several other intersections that prior court decisions found to be points of hazard:

> We conclude that the intersection of M-37 and M-82 in Newaygo County was not a "point of hazard" as contemplated by the Court in *Pick*, at 623-624. The evidence established that the intersection of M-37 and M-82 was clear of visual obstructions in all directions such that a reasonably prudent driver would be able to tell whether opposing traffic was approaching or whether the intersection was clear for travel. Moreover, the flashing red traffic control signal on M-82 was clearly visible to westbound drivers and unmistakably directed drivers to stop and wait for cross-traffic to clear before proceeding. There is simply no evidence on the record that this intersection constituted a point of hazard. The intersection here is readily distinguishable from the unusual situations deemed hazards in *Pick*, at 611-612 (an orchard obstructed the view of cross-traffic at an intersection containing no stop or yield signs), *Iovino*[*v Michigan*, 228 Mich App 125, 129; 577 NW2d 193 (1998)] (a red light before a railroad crossing changed to a flashing yellow light when a train approached), and *McKeen v Tisch (On Remand)*, 223 Mich App 721, 724; 567 NW2d 487 (1997) (a severed tree limb hanging precariously over a road). In this case, there was a flashing red traffic control signal at the intersection. No claim is made that the signal was not properly functioning, not visible, or even not seen by Jones. To the contrary, the undisputed evidence is that Jones observed the flashing red traffic control signal, yet did not obey its command and proceeded into the intersection before cross-traffic had cleared. [*Helmus*, *supra* at 253-254.]

The facts of the instant case mirror most closely those involved in *Helmus*.

[3] Plaintiff contends that the occurrence of between twenty-one and twenty-six accidents at this allegedly busy intersection from 1991 through 1995 demonstrate a point of hazard. The accident records provided indicate, however, that the vast majority of these accidents involved careless or improper driving, including drivers' failures to yield the right of way, following too close, failures to stop, improper turns, lane changes and passing, and several incidents involving alcohol. We find no indication within these records of accidents attributable to defendant's maintenance of the otherwise ordinary highway intersection.

[4] Plaintiff contends that the "Circuit Court never considered this flawed argument [concerning proximate cause] and this Court must not as well." We note, however, that although an issue not addressed by the trial court generally is unpreserved for appeal, issues of law for which all necessary facts have been presented may first be addressed by this Court. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).

[5] *Pick*, *supra* does not overrule *Wechsler*, *supra*, as plaintiff contends. Rather, *Pick* set forth the clear statement that a highway authority has an affirmative duty to maintain the roadbed, including a duty to provide adequate traffic signals at known points of hazard. This does little to assist plaintiff's case where she has failed to demonstrate that the intersection was a known point of hazard and where it has been shown that, had the drivers complied with the existing signal, the accident would not have occurred.