STATE OF MICHIGAN

COURT OF APPEALS

LUCIA J. HANSON, Personal Representative of the Estate of NELS THOMAS HANSON, Deceased,

Plaintiff-Appellant,

v

DALLAS JOSEPH SULLIVAN,

Defendant,

and

BOARD OF COUNTY ROAD COMMISSIONERS OF MECOSTA COUNTY,

Defendant-Appellee.

UNPUBLISHED
October 3, 2000

No. 217869
Mecosta Circuit Court
LC No. 96-011467-NI

ON REHEARING

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant[1] pursuant to MCR 2.116(C)(7), (8), and (10). We granted rehearing in this case after plaintiff moved for rehearing for clarification of our previous opinion.[2] After plaintiff filed her motion for rehearing, our Supreme Court decided *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143; ___ NW2d ___ (2000). In the companion case to *Nawrocki*, *Evens v Shiawasee Co Rd Comm*, the Court overruled *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), a case on which we had

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[1] Because the Board of County Road Commissioners of Mecosta County is the only defendant involved in this appeal, use of "defendant" in this opinion will refer to that entity.

[2] See *Hanson v Bd of Co Rd Comm'rs of Mecosta Co*, unpublished opinion per curiam of the Court of Appeals, issued June 9, 2000 (Docket No. 217869).

heavily relied in our previous opinion. In light of the Court's ruling in *Evens*, we now affirm the trial court's grant of summary disposition.

As we stated in our previous opinion, this case arises out of a head-on automobile collision that occurred on August 3, 1994, on an unpaved road (160th Avenue) in Mecosta County. Plaintiff's son, Nels Thomas Hanson, was killed when he was driving south and defendant Dallas Joseph Sullivan was traveling north and their vehicles collided head-on. The crux of plaintiff's complaint is that the street was not reasonably safe at the hillcrest where the accident occurred because it did not provide adequate sight distance to allow the decedent to avoid the accident. Plaintiff brought two claims against defendant: (1) maintenance of a defective highway, and (2) nuisance per se.[3]

Concerning the defective highway claim, defendant moved for summary disposition, claiming that it was immune from liability under MCL 691.1402; MSA 3.996(102), because its duties to maintain a highway do not encompass those alleged by plaintiff, it did not breach any of its duties, there was no evidence to substantiate the claim that the highway was defective, and even if a highway defect existed, that defect was not the proximate cause of the decedent's injuries. The trial court granted defendant's motion, ruling that defendant had no obligation to make a reasonably safe road safer, and that the proximate cause of the accident was that one of the vehicles crossed the center line. In light of our Supreme Court's recent decision in *Evens, supra*, we affirm the trial court's grant of summary disposition in favor of defendant.

In *Evens, supra* at 179-180, the Court first stated that the county road commission's duty, imposed by MCL 691.1402(1); MSA 3.996(102)(1), is only to repair and maintain the improved portion of the highway designed for vehicular travel. More specifically, the Court held:

> The state and county road commissions' duty, under the highway exception, is only implicated upon their *failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel*, which in turn proximately causes injury or damage. . . . A plaintiff making a claim of inadequate signage, like a plaintiff making a claim of inadequate street lighting or vegetation obstruction, fails to plead in avoidance of governmental immunity because signs are not within the paved or unpaved portion of the roadbed designed for vehicular travel. Traffic device claims, such as inadequacy of traffic signs, simply do not involve a dangerous or defective condition in the improved portion of the highway designed for vehicular travel. [*Id.* at 183-184 (citation omitted; emphasis supplied).]

In the present case, there is no dispute that the actual roadbed surface itself was well maintained.[4] Although plaintiff focused her argument on the limited sight distance where the crash

[3] Plaintiff does not challenge our prior ruling with regard to the nuisance per se claim. Therefore, we again affirm the trial court's decision to grant summary disposition in favor of defendant on the nuisance per se claim for the reasons set forth in our prior opinion.

[4] Plaintiff does not allege that there were holes, ruts, or chatter bumps in the road's surface that would have contributed to the crash, nor does plaintiff contest defendant's assertion that the road had been

(continued…)

occurred, the limited sight distance is not a road surface condition. Rather, it is a design feature that is a product of the terrain through which the road traverses. We believe that under the statute in question, as interpreted in *Evens*, the road commission's duty does not include a duty to correct design defects. Had the legislature intended the correction of design defects to be included, it would have included such a requirement in the statutory language, and not assumed that such a requirement would be inferred under "maintenance and repair." As we observed in our original opinion, this design feature created a point of hazard that prior to *Evens* created an issue of fact. In overruling *Pick, supra*, the Supreme Court instructed that the highway exception to governmental immunity does not contemplate conditions arising from points of hazard. *Evens, supra* at 176-177. At best, plaintiff can only establish a point of hazard resulting from the limited sight distance at the crest of the hill where this occurrence happened, rather than a defect in the actual roadbed surface.

Consequently, we find that plaintiff's allegations under the defective highway claim with regard to limited sight distance are insufficient to avoid governmental immunity. Further, in light of *Evens*, plaintiff's claims of failure to provide adequate warning and failure to reduce the speed limit are not claims involving a dangerous or defective condition in the improved portion of the roadway designed for vehicular travel and cannot form the basis of a defective highway claim.

In sum, we conclude that the trial court's grant of summary disposition in favor of defendant with respect to the defective highway claim was proper. The trial court's decision to grant summary disposition in favor of defendant with respect to the nuisance per se claim is again affirmed.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins

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graded (i.e., resurfaced with gravel) just a few days before the accident.