

STATE OF MICHIGAN
COURT OF APPEALS

MARILYN CARD,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

May 29, 2001

No. 220436

Wayne Circuit Court

LC No. 98-821554-CZ

Before: McDonald, P.J., and Smolenski and K.F. Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition of her trespass-nuisance claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleged that defendant caused a sewage backup into her house when it broke a sewer line while demolishing an adjacent house. Finding that plaintiff failed to establish a trespass-nuisance, the trial court granted defendant's motion for summary disposition.

The Supreme Court has recognized a limited trespass-nuisance exception to governmental immunity. *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139; 422 NW2d 205 (1988). Trespass-nuisance is defined as trespass or interference with the use or enjoyment of land caused by a physical intrusion that is set in motion by the government or its agents and resulting in personal or property damage. To establish trespass-nuisance the plaintiff must show condition (nuisance or trespass); cause (physical intrusion); and causation or control (by government). *Id.* at 169.

Plaintiff failed to establish the necessary elements of the cause of action. Defendant presented evidence that the sewage backup was caused by a break in plaintiff's sewage line on plaintiff's own property. The sewage that entered plaintiff's property did not come from the city sewage line located in the alley. Therefore, the nuisance was not caused by a physical intrusion onto plaintiff's property from a source located outside of plaintiff's property. Because plaintiff's property was not invaded by an outside source, no trespass occurred. *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 586; 609 NW2d 593 (2000). Accordingly, the trial

court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly