

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH HURD, Personal Representative of
the Estate of LEONARD MAURICE HURD,
ANTONIA M. WALLACE, Conservator for
SHANTANIQUE C. LYLES, ADRIENNE
RALEIGH, Conservator for CHARDONNAY
WEEKS, and SONDERIA WATTS, Conservator
for ANTOINE HURD and AMBER HURD,

Plaintiffs-Appellants,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
December 21, 2001

No. 224931
Wayne Circuit Court
LC No. 98-835915-NI

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Lyles, Weeks, and the two Hurd children were in a vehicle driven by Leonard Hurd on northbound Meyers. Another driver ran the stop sign on westbound Chippewa at the intersection with Meyers and struck Hurd's vehicle, killing him and injuring his passengers. Plaintiffs filed this action for damages, alleging that the city was liable for maintaining an unsafe intersection. The trial court dismissed the complaint, ruling that the intersection was not a point of hazard.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

* Circuit judge, sitting on the Court of Appeals by assignment.

Each 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 691.1402(1). A highway is defined as “a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway” but not alleys, trees, or utility poles. MCL 691.1401(e).

The parties and the trial court erred in applying the point of hazard concept adopted in *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), overruled by *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 180; 615 NW2d 702 (2000). That concept established a duty on the part of the state and county road commissions to provide traffic control devices in areas outside the improved portion of the highway designed for vehicular travel, the only area for which they are normally responsible. MCL 691.1402(1). This case involves a claim against a municipality and the duty of municipalities extends beyond “the improved portion of the highway designed for vehicular travel” and thus encompasses the duty to provide adequate traffic control devices. *Ridley v Collins*, 246 Mich App 687, 690; __ NW2d __ (2001); *Cox v Dearborn Heights*, 210 Mich App 389, 394-395; 534 NW2d 135 (1995). In any event, *Pick* has since been overruled. *Nawrocki, supra*. Nevertheless, we affirm on different grounds.

In *Nawrocki*, the Court ruled that the highway exception does not include a duty to keep a highway reasonably safe. The duty to “maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel” encompasses only a duty to keep the highway in reasonable repair. In other words, keeping the highway reasonably safe is “the desired outcome of reasonably repairing and maintaining the highway; it does not establish a second duty to keep the highway ‘reasonably safe.’” *Id.* at 160. Plaintiffs’ claim is not premised on the failure to maintain or repair the intersection, e.g., that the stop sign had come down and was not replaced. Rather, it is premised on a duty to make the intersection safe by installing additional traffic control devices. Because there is no claim that the intersection was in disrepair and the city does not have a duty to make the highway safe, the trial court properly dismissed plaintiffs’ complaint. Cf. *Weakley v Dearborn Heights*, 246 Mich App 322, 327-328; 632 NW2d 177 (2001). We will not reverse where the trial court reaches the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post