

STATE OF MICHIGAN
COURT OF APPEALS

RONALD BRIDON and JUDY BRIDON,

Plaintiffs-Appellees,

v

MICHAEL C. MIKONCZYK, KIMBERLY
MIKONCZYK, and PETER A. PARNEY,

Defendants,

and

STATE OF MICHIGAN and DEPARTMENT OF
TRANSPORTATION,

Defendants-Appellants.

UNPUBLISHED

February 1, 2002

No. 226654

Court of Claims

LC No. 99-017265-CM

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Defendants State of Michigan and Department of Transportation (hereinafter referred to by the singular "defendant") appeal by leave granted the trial court's order denying their motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 7, 1999 plaintiff Ronald Bridon was driving on I-96 when his car stalled. More than twelve inches of snow had fallen during the previous five days, and defendant had cleared the traffic lanes by pushing the snow onto the shoulder of the road. Defendant's actions caused the entire shoulder of the road to be blocked by approximately three feet of snow, and left the shoulder inaccessible to vehicles. Bridon was unable to move his stalled vehicle out of the traffic lane. His vehicle was struck by vehicles owned and operated by defendants Mikonczyk and Parney. Bridon sustained permanently disabling injuries as a result of the accident.

Plaintiffs filed suit alleging that defendant breached its duty to keep the express lanes of I-96 in a condition reasonably safe for public travel.¹ Defendant moved for summary disposition

¹ Originally, plaintiffs filed suit against defendant in the Court of Claims. This action was
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pursuant to MCR 2.116(C)(7), (8), and (10), arguing that it was immune from liability under the natural accumulation doctrine. Defendant also asserted that it was immune from liability as a matter of law because the shoulder was unusable and therefore was not included within the improved portion of the roadway designed for public travel. In response, plaintiffs argued that the snow on the shoulder of the road was not a natural accumulation. The trial court denied the motion, finding that issues of fact existed as to whether defendant acted reasonably. The trial court did not address defendant's argument related to the doctrine of governmental immunity.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A governmental agency is immune from tort liability while engaging in a governmental function, unless an exception applies. MCL 691.1407. The highway exception to governmental immunity, set forth in MCL 691.1402, provides that a 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. The improved shoulder of a highway falls within the exception. *Gregg v State Highway Dep't*, 435 Mich 307, 315; 458 NW2d 619 (1990).

Under the natural accumulation doctrine, a governmental agency has no obligation to remove a natural accumulation of snow and ice from a road under its jurisdiction. The presence of snow and ice on a road does not constitute negligence on the part of the governmental agency, notwithstanding the fact that the accumulation causes difficulties for travelers. However, if snow and ice on a road constitutes an unnatural accumulation, a governmental agency may be liable. The test sometimes applied is whether the governmental agency's action increased the hazard to travelers. The governmental agency's act of removing snow and ice must have introduced an element of danger not previously present, or created an obstacle that exceeded the inconvenience caused by the natural accumulation. *Skogman v Chippewa County Rd Comm*, 221 Mich App 351, 353-354; 561 NW2d 503 (1997).

Defendant argues that the trial court erred by denying its motion for summary disposition. We agree, and reverse the trial court's decision. More than twelve inches of snow fell in the five days preceding the accident in which Bridon was injured. Defendant was not required to take any steps to remove the snow from the roads. *Haliw v Sterling Heights*, 464 Mich 297, 305; ___ NW2d ___ (2001). Defendant chose to clear the roads, and moved the snow to the shoulders. A governmental agency can be liable if its efforts to remove snow from the roads increase the hazard to travelers by creating a new danger or an obstacle that exceeded that originally caused by the natural accumulation. The interference must be unusual or exceptional. The increased hazard theory should not be applied in a way that punishes a governmental agency that attempts to remove snow, and rewards an agency that makes no such effort. *Skogman, supra*. Defendant had the choice of not engaging in any snow removal efforts and leaving the roads and the shoulders of the roads covered with more than twelve inches of snow, for which it would have incurred no liability, *Haliw, supra*, or removing the snow from the roads and placing it on the shoulders. A governmental agency's act of clearing snow from the roads routinely involves pushing the snow onto the shoulders. Moving snow from the traveled portion of the roads onto

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consolidated with the action filed against Mikonczyk and Parney in Wayne Circuit Court.

the shoulders results in the temporary narrowing of the available shoulder area, even in instances in which less than one foot of snow has fallen. In this case, the vast amount of snow that fell caused greater narrowing of the shoulders when it was removed from the roads and added to that already on the shoulders. This is a common occurrence in Michigan during the winter, and cannot be characterized as unusual or exceptional. Defendant was entitled to the protection of the natural accumulation doctrine. *Skogman, supra*.

Reversed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra