

STATE OF MICHIGAN
COURT OF APPEALS

MACOMB COUNTY ROAD COMMISSION,

Plaintiff-Appellee,

v

DAVID T. LYNCH,

Appellant,

and

LYNCH'S, INC., a Michigan corporation
d/b/a/LYNCH'S, DAWN CARSON, Personal
Representative of the Estate of MARGARET
LYNCH, deceased, and BARBARA SUE GIFFIN,

Defendants.

UNPUBLISHED

February 8, 2002

No. 221367

Macomb Circuit Court

LC No. 97-003464-NI

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

MEMORANDUM.

David T. Lynch appeals as of right from the trial court's July 26, 1999, stipulated order of dismissal entered following the trial court's grant of summary disposition in favor of the Macomb County Road Commission under MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo a trial court's ruling on a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews all 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).

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). However, as applied to the state and to county road commissions, the

highway exception to governmental immunity “extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel.” *Id.*

David Lynch claims that plaintiff was negligent in failing to maintain the intersection at issue in reasonable repair because the traffic lights were not properly timed. David Lynch relies on *Pick v Szymczak*, 451 Mich 607, 619; 548 NW2d 603 (1996), in which the Court held that, under MCL 691.1402, a duty exists on the part of the state and county road commissions to provide traffic control devices at “known points of hazard” outside the improved portion of the highway. However, the Court’s decision in *Pick, supra* was since overruled in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 180; 615 NW2d 702 (2000), where our Supreme Court discarded the point of hazard concept.

Rather, in the companion case to *Nawrocki*, *Evens v Shiawassee Co Rd Comm’s*, our Supreme Court ruled that a county road commission’s duty under the highway exception “does not extend to the installation, maintenance, repair, or improvement of traffic control devices, including traffic signs, but rather is limited exclusively to dangerous or defective conditions within the improved portion of the highway designed for vehicular travel; that is, the actual roadbed, paved or unpaved, designed for vehicular travel.” *Id.* at 151-152. Therefore, David Lynch’s claim, which is predicated on plaintiff’s alleged failure to improve the traffic light controlling the intersection, fails as a matter of law. *Iovino v Michigan (On Remand)*, 244 Mich App 711, 715; 625 NW2d 129 (2001).

Affirmed.

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