

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHERYL KOZLOWSKI and SHERYL  
FURMAGA, as Guardian and Conservator of  
CHERYL KOZLOWSKI, a legally incapacitated  
person,

UNPUBLISHED  
July 19, 2002

Plaintiffs-Appellants,

v

DEPARTMENT OF TRANSPORTATION,

No. 232174  
Court of Claims  
LC No. 00-017766-CM

Defendant-Appellee.

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Before: Talbot, P.J., and Cooper and D. P. Ryan\*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition on governmental immunity grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Cheryl Kozlowski sustained serious injuries in an automobile accident that occurred on the Rouge River Bridge on southbound I-75. She stopped her disabled car on the narrow left hand shoulder, where it was struck by another vehicle. Plaintiffs brought this action alleging that the shoulder was inadequate and that defendant had failed to keep the shoulder in reasonable repair and in a condition reasonably safe and fit for travel.

The highway exception to governmental immunity is set forth in MCL 691.1402(1), which provides in part:

[E]ach governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. . . . The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the

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

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.

Immunity conferred upon governmental agencies is broad, and the statutory exceptions are to be narrowly construed. *Robinson v Detroit*, 462 Mich 439, 455; 613 NW2d 307 (2000). Because the highway provision is a narrowly drawn exception to the broad grant of immunity, there must be strict compliance with the conditions and restrictions of the statute. *Scheurman v Dep't of Transportation*, 434 Mich 619, 629-630; 456 NW2d 66 (1990).

Liability under the highway exception extends only to the traveled portion, paved or unpaved, of a roadbed actually designed for public vehicular travel. *Nawrocki v Macomb County Rd Comm'n*, 463 Mich 143, 180; 615 NW2d 702 (2000); *Ridley v Detroit (On Remand)*, 246 Mich App 687, 690; 639 NW2d 258 (2001). A shoulder is part of the highway designed for vehicular travel. *Gregg v State Hwy Dep't*, 435 Mich 307; 458 NW2d 619 (1990). However, the failure to provide a shoulder is not a breach of the statutory duty to maintain reasonably safe roadways under MCL 691.1402. *Soule v Macomb Co Bd of Road Comm'rs*, 196 Mich App 235, 238; 492 NW2d 783 (1992). The highway exception does not extend to claims based upon defective design. *Hanson v Mecosta Co Road Comm'rs*, 465 Mich 492, 502; 638 NW2d 396 (2002).

Plaintiffs claim that the bridge and roadway were defective because they were redesigned without a left hand shoulder sufficiently wide enough to accommodate a disabled vehicle. This is a design defect, which is not encompassed within the highway exception. *Hanson, supra*. The trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Michael J. Talbot  
/s/ Jessica R. Cooper  
/s/ Daniel P. Ryan