STATE OF MICHIGAN

COURT OF APPEALS

LENORE HARPER and DEON TAYLOR as Next Friends of BRYANT TAYLOR,

Plaintiffs-Appellants,

V

CITY OF DETROIT,

Defendant-Appellee,

and

JUAN ROMERO, SR., and JUAN ROMERO, JR.,

Defendants.

UNPUBLISHED
September 20, 2002

No. 231535
Wayne Circuit Court
LC No. 99-906866-NI

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's entry of judgment on a jury verdict of no cause of action. This case arose when three-year-old Bryant Taylor was injured when he was struck by a car driven by Juan Romero, Jr. Plaintiffs filed suit against the city of Detroit, claiming defendant failed to properly maintain the roadway.[1] We affirm.

Plaintiffs' sole issue on appeal is that the trial court erred in refusing to provide a special jury instruction explaining that a cause of action against the city under MCL 691.1402 can be based on the city's defective design and/or construction of the roadway and in failing to submit a verdict form that included the words "design" or "construct." Plaintiffs claim to have requested the special instruction and submitted the proposed verdict form during an off-record conference in the trial court's chambers.

Nothing in the lower court record indicates that plaintiffs requested this special instruction or verdict form. After filing the present appeal, plaintiffs filed a motion with this

[1] Plaintiffs' suit against defendants Romero was settled and is not part of this appeal.

Court to enlarge the record for appeal. In lieu of granting the motion, this Court remanded the matter to the trial court. After a hearing on the motion, the trial court denied plaintiffs' motion to correct the record. Therefore, the alleged special instruction and proposed verdict form are not part of the lower court record and are not properly before this Court; thus, this Court cannot consider these documents in this appeal. See *Hawkins v Murphy*, 222 Mich App 664, 670; 565 NW2d 674 (1997). Because the lower court record does not support plaintiffs' argument, we find no error in the instructions and verdict form as given.

Further, plaintiff waived any objection regarding the verdict form as given by the court. The court specifically asked the parties, "Is there anything wrong with my jury verdict form," and plaintiffs' counsel responded "No, your Honor." The court then asked, "And you're both in agreement; is that correct?" and counsel responded, "Yes." If plaintiffs wanted to challenge the verdict form, plaintiffs should have objected to the form on the record, rather than agree to it. Because plaintiffs explicitly agreed with the court's verdict form, plaintiffs waived any objection to the court's use of the form. See *Schulz v Northville Public Schools*, 247 Mich App 178, 181 n 1; 635 NW2d 508 (2001), citing *People v Carter*, 462 Mich 206, 214-215; 612 NW2d 144 (2000).

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder