

STATE OF MICHIGAN
COURT OF APPEALS

KELLY HOUSER, Personal Representative of the
Estate of AMANDA HOUSER-GUERNSEY,
Deceased,

UNPUBLISHED
October 29, 2002

Plaintiff-Appellant,

v

HILLSDALE COUNTY ROAD COMMISSION,

No. 232091
Hillsdale Circuit Court
LC No. 99-029997-NO

Defendant-Appellee.

Before: Murphy, P.J., and Hood and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) (immunity granted by law) and MCR 2.116(C)(10). We affirm.

This case arises out of a motor vehicle accident in which plaintiff's decedent was killed when she was unable to negotiate a curve on a rural gravel road and struck a concrete bridge. Plaintiff filed suit against defendant alleging negligence for failure to post speed and curve signs at the sight of the accident and for defectively designing the roadway in such a manner that it was unreasonably dangerous for any driver to negotiate the curve. The suit was brought pursuant to the highway exception to governmental immunity, MCL 691.1402.

The trial court dismissed the case on the basis that MCL 691.1402 did not apply to roadway design defects or signage; therefore, defendant was immune from liability and entitled to summary disposition pursuant to MCR 2.116(C)(7). Additionally, the trial court held that all of the evidence presented at summary disposition indicated that the sole cause for the accident and decedent's death was her own gross negligence in doing fifty-five miles per hour in a dense fog on a dirt gravel road at 5:30 a.m.; therefore, defendant was entitled to summary disposition pursuant to MCR 2.116(C)(10).

There is no need for us to consider whether the trial court properly granted defendant summary disposition pursuant to MCR 2.116(C)(10) because summary disposition was proper pursuant to MCR 2.116(C)(7) based on governmental immunity.

This Court reviews de novo motions for summary disposition brought pursuant to MCR 2.116(C)(7). *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). Summary disposition is proper when a claim is barred because of immunity granted by law. *Id.* To survive a motion for summary disposition based on governmental immunity, the plaintiff must allege facts giving rise to an exception to governmental immunity. *Id.* This Court considers all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. *Id.*

Immunity from tort liability is granted to governmental agencies, their employees, and officers by MCL 691.1407(1), which provides, in part, that “[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.” An exception to the general rule of governmental immunity is provided in MCL 691.1402, which provides in relevant part:

Except as otherwise provided in section 2a, each 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 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.

The Legislature’s grant of immunity from tort liability in MCL 691.1407(1) to governmental agencies is to be interpreted broadly and exceptions to this rule are to be narrowly drawn and strictly construed. *Richardson v Warren Consolidated School Dist*, 197 Mich App 697, 699; 496 NW2d 380 (1992).

In *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 184; 615 NW2d 702 (2000), our Supreme Court, addressing MCL 691.1402 and roadway signage, held:

[W]e hold that the state or county road commissions have no duty, under the highway exception, to install, maintain, repair, or improve traffic control devices, including traffic signs. Rather, the state and county road commissions’ duty, the breach of which invokes the highway exception, is limited exclusively to dangerous or defective conditions within the actual roadway, paved or unpaved, designed for vehicular travel.

Therefore, in the instant case, plaintiff’s negligence claim concerning the lack of proper signage along the roadway fails as a matter of law.

In *Hanson v Mecosta Co Rd Comm’s*, 465 Mich 492, 503-504; 638 NW2d 396 (2002), our Supreme Court, rejecting a design defect claim brought under MCL 691.1402 and relying on *Nawrocki*, held:

The plain language of the highway exception to governmental immunity provides that the road commission has a duty to repair and maintain, not a duty to design or redesign.

What the plaintiff sought in this case was to create a duty to design, or redesign, the roadway to make it safer by eliminating points of special danger or hazard. However, there is no such design duty included in the statute. Nowhere in the statutory language are there phrases such as “known points of hazard” or “points of special danger.” We emphasized in *Nawrocki* that the highway exception does not permit claims based on conditions arising from such points of hazard, and that the only permissible claims are those arising from a defect in the actual roadbed itself. Accordingly, the plaintiff’s claims that 160th Avenue was poorly designed and that it did not provide an adequate sight distance are insufficient to avoid governmental immunity.

Therefore, in the instant case, plaintiff’s negligence claim concerning improper design of the roadway fails as a matter of law. There is no other basis for plaintiff’s cause of action, and thus the action was properly dismissed based on governmental immunity.¹

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Christopher M. Murray

¹ Although the accident here occurred before the decision in *Nawrocki*, the decision is retroactive as determined by a special conflict panel of this Court. *Adams v Dep’t of Transportation*, __ Mich App __; __ NW2d __ (Docket No. 230268, issued 10/11/02).