

STATE OF MICHIGAN
COURT OF APPEALS

MARK BZDOK,

Plaintiff-Appellant,

v

CITY OF MARQUETTE,

Defendant-Appellee.

UNPUBLISHED

December 16, 2004

No. 249767

Marquette Circuit Court

LC No. 02-039992-NO

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

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

On September 4, 2001 defendant began the process of repairing a portion of a road from which old railroad tracks had been removed. Defendant placed gravel into the excavated area to prepare it for paving the next day. Before leaving the site for the day, defendant placed barricades and warning signs around the area. At 1:00 a.m. on September 5, 2001 plaintiff rode his bicycle into the repair site, lost control of the bicycle when the front tire dropped into the excavated area, and fell to the ground, sustaining injuries.

Plaintiff filed suit alleging that defendant breached its duty to repair and maintain the road so that it was reasonably safe for public travel by failing to properly ramp the edges of the excavated area so that traffic could cross it undisturbed, and failing to properly warn of the danger created by the excavated area. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that the highway exception to governmental immunity did not apply because it neither breached its duty to maintain the road in reasonable repair, nor had a reasonable amount of time to repair the defect about which plaintiff complained. The trial court granted the motion pursuant to MCR 2.116(C)(10), finding that the undisputed evidence showed that defendant was in the process of fulfilling its duty to repair a section of the road when the accident occurred.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The governmental immunity act, MCL 691.1401 *et seq.*, provides that a governmental agency is immune from tort liability while engaging in a governmental function unless a specific exception applies. The highway exception to governmental immunity, MCL 691.1402(1), requires a governmental agency to maintain a highway under its jurisdiction in reasonable repair so that it is reasonably safe and convenient for public travel.

The highway exception is narrowly construed. *Hatch v Grand Haven Charter Twp*, 461 Mich 457, 464; 606 NW2d 633 (2000). Determination of the applicability of the highway exception is a question of law subject to de novo review. *Meeks v Dep't of Transportation*, 240 Mich App 105, 110; 610 NW2d 250 (2000).

We affirm. An action cannot be maintained under the highway exception unless it clearly falls within the scope and meaning of MCL 691.1402(1). *Weaver v Detroit*, 252 Mich App 239, 245; 651 NW2d 482 (2002). The highway exception imposes a duty of reasonable repair and maintenance, but does not impose a secondary duty to keep a highway reasonably safe. *Weakley v Dearborn Heights*, 246 Mich App 322, 328; 632 NW2d 177 (2001) (no duty to make sidewalk reasonably safe by placing barriers around a portion of sidewalk under repair). Here, defendant undertook to repair that area of the road from which old railroad tracks had been removed. Defendant filled the excavated area with gravel in preparation for paving work to be performed the next day, and placed barricades and warning signs around the area. Plaintiff's apparent position is that defendant was required both to repair and maintain the road, and to keep all portions of the road, including those sections that were under repair, accessible and reasonably safe for public travel at all times. MCL 691.1402(1) does not place such an unreasonable burden on a municipality. The trial court correctly found that defendant met its statutory obligation to repair and maintain the road, and was entitled to governmental immunity. *Meeks, supra*.

A municipality is not liable for injuries caused by a defective highway unless the municipality knew or should have known of the existence of the defect and had a reasonable time to repair it before the injury occurred. MCL 691.1403. Assuming arguendo that the condition of the road constituted a defect, defendant repaired the defect the day after it was created. The trial court correctly found that no genuine issue of fact existed as to whether defendant acted to repair the defect within a reasonable time. Summary disposition was correct.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens