

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

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ALFRED PORADA,

Plaintiff-Appellee,

v

DAVID DEMPSTER and ADRIANA  
DEMPSTER,

Defendants,

and

CITY OF DEARBORN,

Defendant/Third-Party Plaintiff-  
Appellant,

and

GAGLIO, INC., and SECURA INSURANCE  
COMPANY,

Third-Party Defendants,

and

BLUE CROSS BLUE SHIELD,

Intervening Plaintiff.

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UNPUBLISHED

October 26, 2010

No. 292416

Wayne Circuit Court

LC No. 07-714509-NO

Before: O'CONNELL, P.J., and BANDSTRA and MARKEY, JJ.

PER CURIAM.

In this action arising from a bicycle accident due to missing slabs of sidewalk, defendant City of Dearborn appeals as of right the trial court's order denying its motion for summary disposition pursuant to MCR 2.116(C)(7) based on governmental immunity. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's denial of a motion for summary disposition. *Haliw v City of Sterling Hts*, 464 Mich 297, 301; 627 NW2d 581 (2001). “MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties.” *Id.* at 301-302, quoting *Glancy v Roseville*, 457 Mich 580, 583; 577 NW2d 597 (1998).

The city contends that plaintiff may not rely on the highway exception to governmental immunity, MCL 691.1402(1), because any duty it had to maintain the sidewalk in reasonable repair pursuant to that exception was suspended for the reason that the sidewalk was closed to the public at the time of plaintiff's bicycle accident. We agree with the trial court that there is a question of fact whether the sidewalk was closed and, therefore, affirm its decision.

A governmental agency may suspend its duty to maintain a highway in reasonable repair while the highway is being improved or repaired by closing that portion to public traffic. *Grounds v Washtenaw Co Rd Comm*, 204 Mich App 453, 456; 516 NW2d 87 (1994). In *Grounds*, a road closure was marked by eight-foot high barricades and signs warning that the road was closed to through traffic. This Court held that “this was sufficient to suspend the statutory exception to governmental immunity.” *Id.* Here, however, contrary to defendant's assertion, the evidence did not clearly establish that the sidewalk was closed to the public at the time of plaintiff's accident. Rather, this case is factually similar to *Lameau v City of Royal Oak*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 290059, issued July 13, 2010), in which the plaintiff's decedent struck a telephone guy wire that crossed the path of a sidewalk. The contractor in that case had placed barricades so that the sidewalk was “not useable in that area,” but people repeatedly removed them. *Id.*, slip op at 4. This Court disagreed with the city's argument that the sidewalk was closed to the public, stating:

Contrary to Royal Oak's contention, the evidence does not demonstrate that the sidewalk at issue was closed to the public. See *Pusakulich v Ironwood*, 247 Mich App 80, 85-86; 635 NW2d 323 (2001) (noting that a governmental agency can suspend its duty to keep its highways in good repair by closing it to public traffic). Royal Oak presented evidence that it had [the contractor] barricade the [portion of the sidewalk] at issue to prevent the general public from using the sidewalk at the point where it crossed under the guy wire. However, the evidence also shows that the remainder of the new sidewalk was open to the public and that Royal Oak ordered [the contractor] to pave the missing sidewalk flag with asphalt. Likewise, the evidence shows that the barricades were routinely moved or stolen from the location and there is evidence from which reasonable persons could conclude that there were no barriers in place on the date at issue. Under the totality of the circumstances, whether Royal Oak had closed the sidewalk to the public is a question of fact.

In this case, there was evidence that third-party defendant Gaglio, Inc. had placed barricades at the site of the hazard, but the remainder of the sidewalk was open to the public. Further, the evidence indicated that the barricades were repeatedly knocked down. In *Lameau* there was evidence from which one could conclude that there were no barriers in place at the time of the accident. Likewise, the undisputed evidence in the present case established that the barricades were lying in the hole at the time of plaintiff's accident. As in *Lameau*, the mere fact that the barricades had been set up at one time is insufficient to establish that the sidewalk was

closed to the public at the time of plaintiff's bicycle accident. Therefore, there being a question of fact as to whether the sidewalk was closed at the time of plaintiff's accident, the trial court did not err by denying the city's motion for summary disposition.

We affirm. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell  
/s/ Richard A. Bandstra  
/s/ Jane E. Markey