

STATE OF MICHIGAN
COURT OF APPEALS

DAVID ALLEY, JULIE ALLEY, ERIC
BACKLUND, PAM BACKLUND, ANTONIO
FERREIRA, ELIZABETH FERREIRA, JOYCE
JACK-HUGHES, PREMBAI KERAI, JOHN
KOLTON, KATHLEEN KOLTON, ANTHONY
MAHLER, RANDY MILLER, and ROCHEL
MILLER,

Plaintiffs,

and

RACHEL GEER, ROXANNE HUGHES,
SWARTZ FUNERAL HOME, INC, RICK
LAMB, MICHAEL LIZOTTE, ELIZABETH
LIZOTTE, GRAFTON MOORE, DIANE
MOORE, GAROLD PARSONS, SUSAN
PARSONS, ROBERT TATE, FRANK WEAVER,
CONNIE WEAVER, HONEY BEAR CHILD
CARE, MARGARET WITTBRODT, and SCOTT
WILLIAMS,

Plaintiffs-Appellees,

v

CHARTER TOWNSHIP OF MUNDY,

Defendant-Appellant,

and

GENESEE COUNTY DRAIN COMMISSIONER,
GENESEE COUNTY DEPARTMENT OF
PARKS AND RECREATION, and CITY OF
FLINT,

Defendants.

UNPUBLISHED
November 15, 2018

No. 341501
Genesee Circuit Court
LC No. 15-104736-NZ

DAVID ALLEY, JULIE ALLEY, ERIC
BACKLUND, PAM BACKLUND, ANTONIO
FERREIRA, ELIZABETH FERREIRA, JOYCE
JACK-HUGHES, PREMBAI KERAI, JOHN
KOLTON, KATHLEEN KOLTON, ANTHONY
MAHLER, RANDY MILLER, and ROCHEL
MILLER,

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SWARTZ FUNERAL HOME, INC, RICK
LAMB, MICHAEL LIZOTTE, ELIZABETH
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WILLIAMS,

Plaintiffs-Appellees,

v

CHARTER TOWNSHIP OF MUNDY, GENESEE
COUNTY DEPARTMENT OF PARKS AND
RECREATION, and CITY OF FLINT,

Defendants,

and

GENESEE COUNTY DRAIN COMMISSIONER,

Defendant-Appellant.

No. 341510
Genesee Circuit Court
LC No. 15-104736-NZ

DAVID ALLEY, JULIE ALLEY, ERIC
BACKLUND, PAM BACKLUND, ANTONIO
FERREIRA, ELIZABETH FERREIRA, JOYCE

JACK-HUGHES, PREMBAI KERAI, JOHN
KOLTON, KATHLEEN KOLTON, ANTHONY
MAHLER, RANDY MILLER, and ROCHEL
MILLER,

Plaintiffs,

and

RACHEL GEER, ROXANNE HUGHES,
SWARTZ FUNERAL HOME, INC, RICK
LAMB, MICHAEL LIZOTTE, ELIZABETH
LIZOTTE, GRAFTON MOORE, DIANE
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WILLIAMS,

Plaintiffs-Appellees,

v

CHARTER TOWNSHIP OF MUNDY, GENESEE
COUNTY DRAIN COMMISSIONER, and
GENESEE COUNTY DEPARTMENT OF
PARKS AND RECREATION,

Defendants,

and

CITY OF FLINT,

Defendant-Appellant.

Nos. 341763; 341764
Genesee Circuit Court
LC No. 15-104736-NZ

Before: RIORDAN, P.J., and RONAYNE KRAUSE and SWARTZLE, JJ.

RONAYNE KRAUSE, J. (*concurring*).

I respectfully concur with the majority in all respects other than its holding that plaintiffs failed to provide evidence that there was a defect in the sewage disposal system. Plaintiffs provided evidence tending to show that the sewer system should have been capable of handling the amount of rainfall brought by the storm. The fact that the sewer system failed to perform

according to its intended design is direct evidence of a fault, shortcoming, or imperfection in that system. *Willett v Charter Twp of Waterford*, 271 Mich App 38, 51; 718 NW2d 386 (2006). Plaintiffs have therefore established a genuine question of material fact whether “[t]he sewage disposal system had a defect.” MCL 691.1417(3)(b).

However, establishing the existence of a defect does not, by itself, necessarily establish the nature or location of that defect. As the majority explains, plaintiffs must also show that a defendant governmental entity knew or should have known about the defect, MCL 691.1417(3)(c), and had the authority to rectify that defect but failed to do so, MCL 691.1417(3)(d). I agree with the majority that plaintiffs have provided little more than speculation whether they can ever provide evidence of either element. I am constrained to conclude that, other than the bare fact of whether a defect was present, the majority otherwise arrives at the correct result on the basis of correct reasoning. Therefore, I concur.

/s/ Amy Ronayne Krause