STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL VELA,

Plaintiff-Appellee,

v

WAYNE COUNTY AIRPORT AUTHORITY,

Defendant/Third-Party Plaintiff-Appellant,

and

AMERICAN AIRLINES, INC.,

Third-Party Defendant.

UNPUBLISHED
July 26, 2011

No. 298478
Wayne Circuit Court
LC No. 08-113813-NO

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Defendant Wayne County Airport Authority appeals by right the trial court's orders denying its motions for summary disposition under MCR 2.116(C)(7). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff, employed as a fleet service clerk for American Airlines, was driving a TUG and three attached trailers on West Service Drive. According to plaintiff, the TUG was bouncing from "entering [a] rough patch" when its left front tire hit a pothole. The pothole jerked the TUG to the right. Plaintiff attempted to adjust the TUG back to the left to avoid hitting the curb, but the continued bouncing of the TUG and the swaying and tilting of the trailers, caused by rough patches in the pavement, prevented plaintiff from regaining control of the TUG. The TUG hit the curb, plaintiff was thrown from the TUG, and the TUG landed on top of plaintiff.

Plaintiff sued defendant under the public highway exception to governmental immunity. Defendant moved for summary disposition under MCR 2.116(C)(7). Defendant argued that plaintiff's notice failed to comply with the requirements of MCL 691.1404(1) because plaintiff did not specify the exact location of the pothole. Defendant also argued that West Service Drive was not a "highway" subject to the public highway exception because West Service Drive did not extend beyond airport property. The trial court denied defendant's motions. It held that MCL 691.1404(1) did not require specific identification of the pothole's location. It stated that

plaintiff believed a portion of West Service Drive was defective and that plaintiff provided "a very specific" location of the defects. The trial court also held that West Service Drive was a "highway" because it was publicly maintained and accessible by the public. This appeal ensued.

II. STANDARDS OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). Summary disposition is proper under MCR 2.116(C)(7) if "[t]he claim is barred because of . . . immunity granted by law . . . ." We accept as true all well-pleaded allegations and construe them in the nonmoving party's favor, unless contradicted by affidavits, depositions, admissions, or other documentary evidence submitted by the parties. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). We also review de novo issues of statutory interpretation. *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 79; 782 NW2d 514 (2010).

III. THE PUBLIC HIGHWAY EXCEPTION

On appeal, defendant argues that it is entitled to summary disposition because plaintiff's claim is barred by governmental immunity. First, defendant claims that West Service Drive is not a "highway" because it does not extend beyond airport property. Second, defendant asserts that plaintiff's notice did not comply with MCL 691.1404(1) because the notice failed to provide the exact location of the pothole.

A. "HIGHWAY"

Pursuant to the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, governmental agencies are generally immune from tort liability. MCL 691.1407(1); *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007).[1] This grant of immunity is subject to six statutory exceptions, *Rowland*, 477 Mich at 203 n 3, including the public highway exception, MCL 691.1402. The public highway exception provides:

> 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. . . . [MCL 691.1402(1).]

[1] The parties do not dispute that defendant is a governmental agency. See MCL 691.1401(b)

"No action may be maintained under the highway exception unless it is clearly within the scope and meaning of the statute." *Richardson v Warren Consol Sch Dist*, 197 Mich App 697, 702; 496 NW2d 380 (1992) (emphasis, quotation marks, and citation deleted).[2]

Defendant argues that plaintiff's claim falls outside the public highway exception because West Service Drive, which is located entirely within airport property, is not a "highway."[3] We disagree.

The GTLA provides the following definition of "highway":

> "Highway" means a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles. [MCL 691.1401(e).]

Resolution of defendant's argument requires construction of the phrase "a public highway, road, or street." The goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Tevis v Amex Assurance Co*, 283 Mich App 76, 81; 770 NW2d 16 (2009). If the language of the statute is clear and unambiguous, the Legislature is presumed to have intended the meaning clearly expressed, and the statute must be enforced as written. *Ameritech Publishing, Inc v Dep't of Treasury*, 281 Mich App 132, 136; 761 NW2d 470 (2008). "[A] court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). Undefined words should be given their plain and ordinary meaning, *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 506; 778 NW2d 282 (2009), and resort to a dictionary may be appropriate, *TMW Enterprises Inc v Dep't of Treasury*, 285 Mich App 167, 172; 775 NW2d 342 (2009).

We note that defendant presents no argument that West Service Drive is not "open for public travel." The evidence presented by plaintiff establishes that West Service Drive is "open for public travel." West Service Drive is accessible from either Goddard Road or Burton Drive.

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[2] Defendant does not dispute that it has jurisdiction over West Service Drive.

[3] We find unavailing plaintiff's assertion that *Yeomans v Wayne Co*, unpublished opinion per curiam of the Court of Appeals, issued July 19, 2005 (Docket No. 252216), precludes defendant from arguing that West Service Drive is not a "highway." In *Yeomans*, this Court held that a temporary drive created for the use of buses was a public highway, road, or street open for public travel and that, consequently, the plaintiff's claims against Wayne County and the Wayne County Airport Authority relating to her injuries that resulted from stepping into a pothole in the drive were not barred by governmental immunity. The temporary drive at issue in *Yeomans* was not West Service Drive. Moreover, although the temporary drive may have been completely within airport property, this fact was not relied on by the Court in holding that the temporary drive was a public highway open for public travel. The Court did not address or decide the issue whether a service drive was a "highway" because it was located entirely within airport property.

There are no signs or restrictions prohibiting any member of the public from using West Service Drive. See *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609, 618; 664 NW2d 165 (2003) (stating that a public building is not open for use by the public when the governmental agency has restricted entry to persons who are qualified on the basis of some individualized, limiting criteria). We also note that West Service Drive is a "public" drive; it is not privately owned and maintained.

West Service Drive is a "highway, road, or street," as those words are commonly understood. West Service Drive is paved with concrete and travel lanes are demarcated by double yellow lines down the center of the pavement. Crosswalks are painted on West Service Drive. Road signs, such as pedestrian crossings and stop signs, are installed along the side of West Service Drive. Moreover, as already stated, West Service Drive connects to two other roads, Goddard Road and Burton Drive, and members of the public routinely use West Service Drive to access a Post Office and various other public places located on defendant's property.

We find no merit to defendant's argument that because West Service Drive does not extend beyond airport property, it is not a "highway, road, or street."[4] A "highway" is "a main road, esp. one between towns or cities," "any public road or waterway," or "any main or ordinary route, track, or course." *Random House Webster's College Dictionary* (1992). A "road" is "a long, narrow stretch with a leveled or paved surface, made for traveling by motor vehicle, carriage." *Id.* "Street" is a "paved public thoroughfare, as in a town or city, including sidewalks. *Id.* There is nothing in these definitions, nor in any of the statutory or dictionary definitions cited by plaintiff, that require a "highway, road, or street" to extend beyond one piece of property. We have also reviewed the four cases cited by defendant,[5] and find nothing in them to support the proposition that a paved vehicular passageway, which is open to the public and used for public travel, is not a "highway, road, or street" simply because it does not extend beyond one piece of property. Because we may not read anything into a statute that is not derived from the words of the statute itself, we refuse to read into the public highway exception the requirement that a "highway" must extend beyond one piece of property. Accordingly, we affirm the trial court's order denying defendant's motion for summary disposition that was based on West Service Drive not being a "highway."

B. NOTICE

[4] We note that defendant's argument generally cannot be made in cases involving the public highway exception. Governmental agencies that have jurisdiction over "highways," such as the Department of Transportation, municipal corporations, or county road commissions, do not own or control one specific piece of property. It is the unique nature of defendant that allows defendant to make its argument.

[5] *Roby v Mount Clemens*, 274 Mich App 26; 731 NW2d 494 (2006); *Detroit Edison Co v Spartan Express, Inc*, 225 Mich App 629; 572 NW2d 39 (1997); *Richardson* 197 Mich App 697; *Ward v Frank's Nursery & Crafts, Inc*, 186 Mich App 120; 463 NW2d 442 (1990).

To bring a claim under the highway exception, a plaintiff must provide notice to the governmental agency. MCL 691.1404(1); *Plunkett v Dep't of Transp*, 286 Mich App 168, 176; 779 NW2d 263 (2009). MCL 691.1404(1) provides:

> As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

A notice that does not specify the "exact location" of the defect does not comply with MCL 691.1404(1). *Jakupovic v Hamtramck*, 489 Mich 939; 798 NW2d 12 (2011).

Defendant argues that because plaintiff's notice did not specify the exact location of the pothole the notice did not comply with MCL 691.1404(1). We disagree.

Here, the pothole was a significant factor in the accident. After the TUG's front left tire hit the pothole, the TUG veered to the right. However, the pothole was not the only defect that caused plaintiff's accident. Plaintiff's deposition testimony and affidavit establish that other defects in West Service Drive, such as broken and uneven pavement, contributed to the accident. After the TUG hit the pothole, the TUG and the trailers continued to bounce and sway from hitting "rough patches." The bouncing and swaying prevented plaintiff from regaining control of the TUG before it hit the curb.

We conclude that plaintiff's notice provided the "exact location" of the defects even though it did not specifically identify the pothole's location. It was plaintiff's theory, and it is borne out by plaintiff's testimony and affidavit, that the defective road surface of West Service Drive, and not just the pothole, caused plaintiff's accident. Plaintiff's notice provided the "exact location" of the defective road surface. Plaintiff's notice included two letters, a police-drawn sketch of the accident scene, and eight colored photographs. The first letter stated that the accident occurred 500-600 feet east of the Checkpoint 1 entry, near a bus drop off area and a crosswalk. The second letter stated that the defective road surface was located in the eastbound lane of West Service Road next to a bus stop area in front of Northwest Building 514. The letter also stated that the defective road surface was located between points "A" and "B" on the police-drawn sketch. Moreover, the eight photographs showed the defects in the road surface. Accordingly, plaintiff's notice by word, sketch, and picture informed defendant of the "exact location" of the defective road surface. We affirm the trial court's order denying defendant's motion for summary disposition that was based on lack of proper notice.

Affirmed.

/s/ Michael J. Talbot
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher