

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

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AHMAD NAJI, as Next Friend of MOHAMMAD  
NAJI, a Minor,

UNPUBLISHED  
July 6, 2006

Plaintiff-Appellee,

v

CITY OF DEARBORN,

No. 264712  
Wayne Circuit Court  
LC No. 04-418612-NO

Defendant-Appellant.

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Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying its motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

This case arises out of Mohammad Naji's fall in June 2002. Mohammad was rollerblading on the sidewalk in his neighborhood when he tripped and fell into a fire hydrant. According to Mohammad, he tripped over a stub of what used to be a "Stop" sign. The sign was previously posted in the sidewalk near one corner of an intersection. Plaintiff produced affidavits from local residents who stated that a "Stop" sign had been removed from the sidewalk in June 2001, one year prior to Mohammad's fall. Plaintiff contends that the signpost had been sawed off, leaving a small portion of the post remaining, which protruded slightly above the level of the sidewalk. This stub caused Mohammad to trip and fall into the nearby hydrant.

Plaintiff filed suit alleging that defendant breached its duty to repair and maintain the sidewalk in reasonable repair so that it was reasonably safe for public travel. Defendant moved for summary disposition on governmental immunity grounds pursuant to MCR 2.116(C)(7) and (C)(10). Defendant contended that plaintiff had failed to plead a case under the highway exception to governmental immunity because the alleged defect was not in the sidewalk, but was instead a "defective" sign. Defendant had no duty to install, maintain, repair, or remove such a traffic control device under the highway exception to governmental immunity. The trial court disagreed, finding that the case involved a sidewalk defect, not a defect related to a traffic control device because there was no longer any traffic device.

## II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(7), we must accept as true the plaintiff's well-pled allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996). In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), we must review the record evidence and all reasonable inferences drawn therefrom in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists. *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002). 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).

## III. ANALYSIS

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).

The definition of "highway" includes sidewalks:

(e) "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).]

The area in which plaintiff fell fits the definition of a "sidewalk." See *Stabley v Huron-Clinton Metro Park Auth*, 228 Mich App 363, 368-369; 579 NW2d 374 (1998); MCL 257.60.

A municipality has the obligation to actively perform necessary repair work to keep sidewalks in reasonable repair. *Jones v Enertel, Inc*, 467 Mich 266, 268; 650 NW2d 334 (2002). However, a municipality is not liable for an injury caused by a defective sidewalk unless the municipality knew or in the exercise of reasonable diligence should have known of the existence of the defect and had a reasonable time to repair the defect before the injury occurred. Knowledge of the defect and time to repair it are conclusively presumed if the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury occurred. MCL 691.1402a; MCL 691.1403.

In the instant case, defendant maintains that it is not liable for the allegedly dangerous condition because the condition that caused plaintiff's accident was due to a stop sign. This Court has held that the highway exception to governmental immunity does not impose a duty on municipalities to "install, maintain, repair, or improve traffic signals." *Johnson-McIntosh v Detroit*, 266 Mich App 318, 330; 701 NW2d 179 (2005), citing *Nawrocki v Macomb County Rd*

*Comm*, 463 Mich 143, 180; 615 NW2d 702 (2000); *Weaver v Detroit*, 252 Mich App 239, 245-246; 651 NW2d 482 (2002).

Here, defendant asserts that the failure to properly remove the sign constitutes a failure to properly repair or maintain the stop sign, rather than a failure to properly maintain the sidewalk itself. However, the defect in this case was located squarely inside the sidewalk which is designed for public travel. A genuine issue of fact exists as to whether defendant undertook the necessary repair work to maintain the sidewalk in reasonably safe condition for public travel. *Jones, supra* at 268.

Affirmed.

/s/ Alton T. Davis  
/s/ David H. Sawyer  
/s/ Bill Schuette