

STATE OF MICHIGAN
COURT OF APPEALS

MARIANNE A. CARMODY,

Plaintiff-Appellant,

v

CITY OF SALINE,

Defendant-Appellee.

UNPUBLISHED

July 13, 2006

No. 259939

Washtenaw Circuit Court

LC No. 03-001212-NO

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendant under MCR 2.116(C)(7) on the basis of governmental immunity. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was walking on a walkway in Saline when she tripped and fell on an alleged defect in the walkway and injured herself. The walkway on which plaintiff tripped ran between a parking lot owned by defendant and adjacent stores, was perpendicular to a city street, and intersected a sidewalk that ran alongside the street. The walkway was installed for pedestrians to walk from the parking lot to the street.

Plaintiff sued defendant under the highway exception to governmental immunity, alleging that defendant did not maintain the walkway in a reasonably safe condition fit for travel. Defendant moved for summary disposition on the basis of governmental immunity. The circuit court granted summary disposition to defendant, finding that plaintiff's claim did not fall within the highway exception because the walkway was not adjacent to, or alongside, the street but ran perpendicular to the street. The court denied plaintiff's motion for rehearing, stating, "This Court's ruling does not rest on whether or not the sidewalk is perpendicular to the roadway, but rather on the conclusion that the sidewalk is clearly not adjacent to the roadway."

Plaintiff contends that the highway exception applies because the walkway was near and essentially adjacent to the street. We disagree. Governmental immunity and its exceptions are set forth in the Governmental Liability for Negligence Act, MCL 691.1401 *et seq.* Under MCL 691.1407(1), "a governmental agency is immune from tort liability if the agency is engaged in the exercise or discharge of a governmental function," unless an exception to immunity applies. A highway exception is contained in MCL 691.1402(1); it permits liability against a governmental agency for its failure "to keep a highway under its jurisdiction in reasonable repair

and in a condition reasonably safe and fit for travel.” A highway includes “a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway.” MCL 691.1401(e). The term “sidewalk” is not defined in the statute.

Michigan courts have attempted to define the term “sidewalk.” In *Stabley v Huron-Clinton Metropolitan Park Authority*, 228 Mich App 363; 579 NW2d 374 (1998), this Court extensively analyzed the term. In *Stabley*, the plaintiff was injured when his roller blade became wedged in a crack in the pavement of a path in the defendant's park. *Id.* at 364. The *Stabley* Court consulted four dictionaries and MCL 257.60, a provision of the Michigan Vehicle Code, for the definition of a sidewalk. *Stabley, supra* at 367-368. The Court concluded that “linking the word ‘sidewalk’ with an adjacent road is in accord with the common and approved usage of the word [sidewalk].” *Id.* at 369. Because the plaintiff’s fall “did not occur on the portion of the trail that runs adjacent to the roadway, but rather on the portion that runs through the wooded interior of the park,” the “plaintiff’s fall did not occur on a ‘sidewalk’ within the meaning of MCL 691.1401(e),” and the defendant was entitled to immunity. *Stabley, supra* at 369.

In *Haaksma v City of Grand Rapids*, 247 Mich App 44, 55; 634 NW2d 390 (2001), this Court concluded that a “sidewalk” must run alongside of and parallel to a street in order to come within the highway exception. In *Haaksma*, the plaintiff was injured when she stepped on an exposed wire of a damaged lighting fixture that was lying on the alleged sidewalk. *Id.* at 47. The walkway was part of an interconnected system, of which only part ran alongside a street. *Id.* at 55. The plaintiff sued the city under the highway exception to governmental immunity. *Id.* at 49-50. Relying on *Stabley*, this Court affirmed the trial court’s grant of summary disposition to the defendant because the part of the sidewalk where the plaintiff was injured did not run alongside a public roadway and, therefore, was not subject to the highway exception to governmental immunity. *Id.* at 55.

Based on the analyses in *Stabley* and *Haaksma*, we conclude that, under the highway exception to governmental immunity, a sidewalk is a walkway for pedestrian traffic that runs alongside of or parallel to a roadway. In this case, it is undisputed that plaintiff fell just several feet from the roadway on a walkway that is perpendicular to the street. In spite of the walkway’s proximity to the street, under *Stabley* and *Haaksma*, the walkway is not “adjacent” to the street because it does not run parallel to or alongside of a street. Therefore, the walkway does not fall within the highway exception to governmental immunity. Accordingly, we find that the circuit court properly granted summary disposition to defendant.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter

I concur in result only.

/s/ Jane E. Markey