

STATE OF MICHIGAN
COURT OF APPEALS

RICK BUCHANAN,

Plaintiff-Appellee,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

UNPUBLISHED

June 29, 2006

No. 267856

Court of Claims

LC No. 05-000103-MD

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

PER CURIAM.

Defendant appeals as of right from the court of claims' order denying its motion for summary disposition predicated on governmental immunity. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff alleges that he was a passenger in a vehicle proceeding under an overpass for I-75, when a piece of concrete fell from the overpass, broke through his vehicle's windshield, and caused some windshield glass to penetrate his eye. Plaintiff brought suit against defendant as the entity having jurisdiction and control over overpass in question. Defendant sought summary disposition, asserting governmental immunity. MCR 2.116(C)(7). The trial court denied the motion, opining that "part of the improved portion of a roadway includes a structure that supports it," and adding, "if that collapses and you dive down or fall off or drop a piece of the roadway onto somebody, some poor soul traveling below, I think you have some responsibility."

II. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Statutory interpretation also calls for review de novo. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004). A motion for summary disposition based on governmental immunity is decided by examining all documentary evidence submitted by the parties, accepting all well-pleaded allegations as true and construing all evidence and pleadings in the light most favorable to the nonmoving party. *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004).

III. ANALYSIS

Governmental agencies in this state are generally immune from tort liability for actions taken in furtherance of governmental functions. MCL 691.1407(1). However, the immunity statute includes an exception for public highways, according to which “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.” MCL 691.1402(1). The statute further provides that the “duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include . . . any . . . installation outside of the improved portion of the highway designed for vehicular travel.” *Id.*

The statutory grant of immunity to governmental agencies is broad, and the highway exception, as with all exceptions, must be construed narrowly. See *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000). Accordingly, “[t]he state and county road commissions’ duty, under the highway exception, is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage.” *Id.* at 183.

Defendant asserts that the falling concrete was not part of the road’s actual surface, and argues that it thus cannot be considered a defect in the “improved portion of the highway designed for vehicular travel” as specified by MCL 691.1402(1). But our Supreme Court recognized the highway exception in connection with not just a road’s surface, but with the “actual physical structure of the roadbed surface” *Nawrocki, supra* at 183. The word “structure” suggests not just the surface area or top layer of construction materials, but to “[s]omething made up of a number of parts that are held or put together in a particular way.” *American Heritage Dictionary* (2d college ed, 1985), p 1208. The trial court’s holding, then, that “the improved portion of a roadway includes a structure that supports it,” comports with the governing case law. Likewise, the Supreme Court’s use of “roadbed surface,” instead of “road surface,” in stating the rule, implicates not just a road’s two-dimensional surface that actually comes into contact with traffic, but also its construction components underneath.

Defendant points to an unpublished opinion of this Court, *Brown v Dep’t of Transportation*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 2004 (Docket No. 248059), which affirmed a denial of immunity where a piece of an overpass fell and struck a vehicle traveling beneath it. Defendant cites the case in support of its position despite the adverse outcome because the *Brown* panel apparently felt that the plaintiff would have failed to plead in avoidance of immunity had she not offered the theory that the defendant caused the material beneath the bridge’s roadway to deteriorate “by allowing water and ice to filter to the bottom of the roadway,” thus tying the falling debris to a defect originating at the surface. *Id.*, slip op at 2-3. But the panel did not specifically reach the question whether such a defect would be actionable against a governmental agency had it not been so artfully pleaded. Moreover, unpublished decisions of this Court are not precedentially binding. MCR 7.215(C)(1).

Affirmed.

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