

STATE OF MICHIGAN
COURT OF APPEALS

LISA LANE,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
February 22, 2005

No. 251421
Wayne Circuit Court
LC No. 03-315900-NI

Before: Fort Hood, P.J. and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this governmental immunity case. Because the sewage disposal system event exception to governmental immunity applies prospectively only and plaintiff's cause of action accrued before the exception's enactment, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff experienced several sewer backups in the basement of her home between May 1999 and February 2001. She complained to defendant and filed a claim for damages; however defendant denied the claim.

In May 2003 plaintiff filed suit in circuit court, alleging that defendant was liable for the damages caused by the backups under the sewage disposal system event exception to governmental immunity, MCL 691.1417(3). Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that the sewage disposal system event exception to governmental immunity was not applicable because the statute applied to claims that arose after April 2, 2002, and that plaintiff's claims accrued prior to that date. The trial court agreed and granted the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The governmental tort liability 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 immunity of a governmental agency does not apply to actions to recover for damages arising out of a sewage disposal system event. MCL 691.1417(3). The applicability

of governmental immunity is a question of law that we review de novo on appeal. *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

In *Pohutski v Allen Park*, 465 Mich 675, 684-690, 695, 699; 641 NW2d 219 (2002), our Supreme Court held that a trespass-nuisance exception to governmental immunity did not exist, and overruled *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139; 422 NW2d 205 (1988). The *Pohutski* Court determined that its ruling applied only prospectively from the date of the decision, April 2, 2002, and concluded that in all currently pending cases, the *Hadfield* rule would apply. *Id.* at 695-699. The *Pohutski* Court observed that 2001 PA 222, the legislation that created the sewage disposal system event exception to governmental immunity, did not contain language indicating that it was to apply retroactively. The Court thus concluded that, given the absence of any such language, the inclusion of a forty-five day notice requirement,¹ and the presumption that statutes operate prospectively, 2001 PA 222 did not apply retroactively. *Id.* at 698.

Pohutski, supra, held that the legislation that created the sewage disposal system event exception applies prospectively only. *Id.* at 698. Application of a statute prospectively means that the statute applies only to causes of action that accrue after its effective date. *Farris v Beecher*, 85 Mich App 208, 215; 270 NW2d 658 (1978).² Plaintiff filed her cause of action after the effective dates of MCL 691.1417(3) and *Pohutski, supra*; however, her claims accrued prior to the effective date of the statute. The sewage disposal system event exception to governmental immunity is inapplicable to plaintiff's claim. *Pohutski, supra* at 698-699. Furthermore, because plaintiff's claim was not pending on the date *Pohutski, supra*, was decided, the trespass-nuisance exception set out in *Hadfield, supra*, is inapplicable as well. *Id.* at 699.

Finally, plaintiff's assertion that she is entitled to the benefit of the continuing wrongful acts doctrine³ is without merit. Plaintiff cannot avoid application of *Pohutski, supra*, and its

¹ MCL 691.1419(1) provides that a claimant is not entitled to collect damages under MCL 691.1417 unless he provides the appropriate governmental agency with notice of the damage within forty-five days after the damage was discovered or should have been discovered. Thus, by its own terms, the sewage disposal system event exception applies only to claims arising after its effective date or within forty-five days before that date.

² Plaintiff's reliance on *Doe v Dep't of Corrections (On Remand)*, 249 Mich App 49; 641 NW2d 269 (2001), for the proposition that a statute is not regarded as operating retroactively merely because it refers to an event that occurred before the effective date of the statute is misplaced. That rule relates to the measurement of the amount of entitlement provided by a subsequent statute for services rendered under a prior statute. *Id.* at 60.

³ The continuing wrongful acts doctrine recognizes that if a defendant's wrongful acts are of a continuing nature, the statute of limitations does not begin to run until the wrong is abated. The doctrine is applied in circumstances alleging trespass, civil rights violations, and nuisance. *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 246-247; 673 NW2d 805 (2003).

abolition of the trespass-nuisance exception by asserting the continuing wrongful acts doctrine against defendant.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio