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STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS WILLIAMS,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED
November 06, 2026
12:50 PM

No. 376144
Wayne Circuit Court
LC No. 22-013035-NO

Before: LIEVENSE, P.J., and SWARTZLE and MARIANI, JJ.

PER CURIAM.

In this premises-liability case, defendant City of Detroit appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(7) (immunity granted by law) and (C)(10) (no dispute of material fact). Previously, we reversed an order from the trial court granting summary disposition to defendant on other grounds and remanded for further proceedings with instructions to consider defendant's arguments regarding governmental immunity under MCL 691.1402a. The trial court did so and concluded that defendant was not entitled to governmental immunity under the statute. We affirm.

I. BACKGROUND AND PROCEDURAL HISTORY

On July 23, 2023, plaintiff was driving home after visiting a friend in Southfield. He wanted to buy a soda, so he parked his car on the southern side of 20447 West Seven Mile Road in front of Northwest Liquor. Plaintiff exited his car and stepped on the curb with his left foot. However, there was a crack or gouge in the curb, and it crumbled beneath his foot, plaintiff fell, and he became injured.

Plaintiff filed a complaint against defendant alleging it had failed to satisfy its duty to maintain the curb in a reasonably safe condition, including that it knew or should have known the sidewalk was in a "dangerous condition" in that location. During discovery, plaintiff was deposed, and he testified regarding his fall. Plaintiff deposed Amir Masood, an Engineering Services Coordinator for the Detroit Department of Public Works. Masood testified that he and several other inspectors conducted a survey of the sidewalk on Seven Mile Road on June 18, 2019. He testified further that the survey revealed multiple broken sidewalk slabs along Seven Mile Road. Masood

reviewed several documents related to the survey including a "sketch" that indicated there were at least three broken sidewalk slabs in front of the liquor store that included the curb that plaintiff alleged caused his injuries.

Plaintiff's counsel also showed Masood Google Street View images taken in August 2019 depicting the sidewalk area in front of the liquor store. In these images, plaintiff's counsel circled a "crack" on a part of the sidewalk Masood described as "the integral curb." Plaintiff alleged that the crack later developed into a "gap" or "gouge" that caused his injury. Masood testified that the sidewalk had likely been damaged because people parked their vehicles on the sidewalk. He also criticized the craftmanship of the sidewalk, stating that it was "poured" wrong. He stated further "[t]here's no joint here. There's no joint. If any crack comes here, it will continue all the way where the stresses are broken up."

Masood was also shown a photograph plaintiff took of the sidewalk approximately a week after his fall. This image showed a "chunk" of pavement missing from the curb. Masood, however, was unable to confirm that the image showed "a later iteration of the same crack" shown in the Google Street View images because the angle was different. He agreed that defendant had notice of the broken sidewalk slabs along West Seven Mile Road because it had conducted the June 2019 survey. However, Masood maintained that defendant had no duty to maintain the sidewalk because it was outside its jurisdiction.

Post-discovery, defendant moved for summary disposition under MCR 2.116(C)(7) and (C)(10), arguing that it was immune from liability under the governmental tort liability act (GTLA), MCL 691.1401 *et seq*., because Seven Mile Road was a county highway and, as such, Wayne County had jurisdiction over the curb. Alternatively, if the curb was part of the sidewalk, defendant argued that plaintiff did not provide evidence to rebut the statutory presumption under MCL 691.1402a that the sidewalk was maintained in reasonable repair at the time plaintiff fell and that plaintiff did not provide evidence that it had sufficient notice of the alleged defect as required. Plaintiff responded that the curb was part of the sidewalk, not the road, and within defendant's jurisdiction.

The trial court granted defendant's motion for summary disposition. On appeal, a panel of this Court reversed, finding that the trial court erred by concluding that the curb was not part of the sidewalk. The panel held "that defendant may be liable for the failure to maintain it in reasonable repair, MCL 691.1402(1), unless MCL 691.1402a provides otherwise."[1] However, the panel did not address defendant's arguments regarding MCL 691.1402a, instead remanding the case for further proceedings so that the trial court could address those arguments.

Following remand, defendant filed a renewed motion for summary disposition. Regarding the statutory presumption of reasonable repair described under MCL 691.1402a(3), defendant argued that plaintiff had failed to provide evidence that the crumbling pavement was a vertical discontinuity of more than two inches, meaning plaintiff failed to rebut the presumption. Defendant also argued that plaintiff had failed to show that defendant had sufficient notice of the sidewalk

[1] *Williams v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued February 13, 2025 (Docket No. 369609), p 5.

defect at least 30 days before his fall as required under MCL 691.1402a. Plaintiff responded that he had rebutted the statutory presumption of reasonable repair by alleging that the condition of the sidewalk constituted a "dangerous condition . . . other than a vertical discontinuity," MCL 691.102a(3)(b), and by providing evidence to support that allegation. Plaintiff also argued that the 2019 survey showed that defendant had both actual and constructive notice of the sidewalk and that whether such notice existed was a question of fact rather than a question of law.

The trial court denied defendant's motion for summary disposition, holding that a question of fact existed regarding the defective nature of the sidewalk and notice. This appeal followed.

II. STANDARD OF REVIEW

We review de novo a decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A trial court may grant summary disposition under MCR 2.116(C)(7) based on immunity granted by law. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008). Under MCR 2.116(C)(7), a reviewing court "must accept all well-pleaded factual allegations as true" and construe them in the light most favorable to the nonmoving party, unless other evidence contradicts them. *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). The reviewing court must consider any affidavits, depositions, or other documentary evidence to determine if there is a genuine issue of material fact. *Id*. at 429. "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court." *Id*. We also review de novo the applicability of government immunity, *Plunkett v Dep't of Transp*, 286 Mich App 168, 180; 779 NW2d 263 (2009), and the interpretation of statutory language, *City of Grand Rapids v Brookstone Capital, LLC*, 334 Mich App 452, 457; 965 NW2d 232 (2020).

III. REASONABLE REPAIR

Defendant first argues that the trial court erred by finding that it was not entitled to governmental immunity under MCL 691.1402a(3) because plaintiff failed to rebut the statutory presumption that the sidewalk was reasonably maintained when he fell. We disagree.

Under the GTLA, governmental agencies are generally immune from tort liability when engaged in the exercise or discharge of a government function. *Ray v Swager*, 501 Mich 52, 62; 903 NW2d 366 (2017). However, a governmental agency can be held liable under the GTLA if a claim falls into a statutory exception to immunity. *Moraccini v City of Sterling Hts*, 296 Mich App 387, 392; 822 NW2d 799 (2012). The immunity conferred by the GTLA is broad, which means the statutorily created exceptions to immunity are narrowly construed. *Plunkett*, 286 Mich App at 180.

The statutory exception to governmental immunity at issue in this case is the "sidewalk exception" set forth in MCL 691.1402a. Under the sidewalk exception, "[a] municipal corporation in which a sidewalk is installed adjacent to a municipal, county, or state highway shall maintain the sidewalk in reasonable repair." MCL 691.1402a(1). To succeed in a tort claim against a municipality, the plaintiff must overcome a presumption that the municipality maintained the sidewalk in reasonable repair. MCL 691.1402a(3). Specifically, MCL 691.1402a(3) provides:

> In a civil action, a municipal corporation that has the duty to maintain a sidewalk under subsection (1) is presumed to have maintained the sidewalk in reasonable repair. This presumption may only be rebutted by evidence of facts showing that a proximate cause of the injury was 1 or both of the following:
>
> (a) A vertical discontinuity defect of 2 inches or more in the sidewalk.
>
> (b) A dangerous condition in the sidewalk itself of a particular character other than solely a vertical discontinuity.

Under MCL 691.1402a(4), "[w]hether a presumption under subsection (3) has been rebutted is a question of law for the court."

Here, the legal question that must be answered is whether plaintiff has presented sufficient evidence that a proximate cause of his injury was a "dangerous condition in the sidewalk," MCL 691.1402a(3)(b), to rebut the statutory presumption of reasonable repair. Defendant argues that plaintiff failed to present sufficient evidence that the defect that caused his injury was a vertical discontinuity of two or more inches under MCL 691.1402a(3)(a). But the presumption of reasonable repair can be rebutted by sufficient evidence of a sidewalk defect that meets the criteria of "1 or both" of the conditions described under MCL 691.1402a(3), and plaintiff relies on the condition described in subpart (3)(b). See *Mann v City of Detroit*, 21 NW3d 451, 452 n 2 (2025) (noting that "MCL 691.1402a(3) provides that the presumption of reasonable repair can be rebutted by showing that the injury was caused by '1 *or both* of the following' conditions: '[a] vertical discontinuity defect of 2 inches or more in the sidewalk' or '[a] dangerous condition in the sidewalk . . . other than solely a vertical discontinuity' ").

MCL 691.1402a(1) imposes a duty to "maintain the sidewalk in reasonable repair." "Sidewalk," except as used in the statutory definition of "highway," MCL 691.1401(c), "means a paved public sidewalk intended for pedestrian use situated outside of and adjacent to the improved portion of a highway designated for vehicular travel." MCL 691.1401(f). "In common usage, 'maintain' means 'to keep in a state of repair, efficiency, or validity: preserve from failure or decline.' Similarly, 'repair' means 'to restore to a good or sound condition after decay or damage; mend.' " *Hanson v Bd of Co Rd Comm'rs*, 465 Mich 492, 502; 638 NW2d 396 (2002) (citations omitted). The phrase "dangerous condition in the sidewalk itself of a particular character" is not defined by the statute.

However, this Court has held that a dangerous condition on a sidewalk is one that "directly affects travel along the improved portion of the highway (including a sidewalk), . . . so that it is not reasonably safe." *Weakley v City of Dearborn Hts*, 240 Mich App 382, 387-388; 612 NW2d 428 (2000) (quotation marks and citation omitted). See also *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 168; 713 NW2d 717 (2006) (holding that a plaintiff "must allege that the governmental agency was on notice that the highway contained a defect rendering it not 'reasonably safe and convenient for public travel' "). Thus, at a minimum, a plaintiff is obligated to "allege that the paved sidewalk was broken, uneven, or otherwise defective as a walking surface." *VC by*

Consolino v Macomb Co, unpublished per curiam opinion of the Court of Appeals, issued July 20, 2026 (Docket No. 372154), p 4.[2]

In this case, plaintiff provided sufficient allegations and evidence to rebut the presumption of reasonable repair under MCL 691.1402a(3)(b). He alleged that the sidewalk adjoining 20447 West Seven Mile Road was "defective and negligently maintained" such that he "stepped onto the broken portion of the subject sidewalk, lost his balance, and fell, thereby sustaining serious injuries . . . . " Moreover, plaintiff alleged that defendant "negligently caused and/or allowed a significant gouge defect to form in the sidewalk thereby making the area unfit and unsafe for persons to walk on, all of which the Defendant knew, or in the exercise of reasonable care, should have known."

More important, to support these allegations, plaintiff provided (1) testimony from his deposition that his injury was caused after he placed his left foot in a "gap" filled with "loose pavement," (2) testimony from Masood concerning a June 18, 2019 survey showing the relevant sidewalk slab was broken and needed repair, likely from vehicles driving and parking on the curb, but no repairs occurred, (3) Google Street View images from August 2019 showing a crack where plaintiff alleged the gouge defect was located at the time of his fall, (4) the 2019 survey itself, including a sketch indicating that at least three slabs near the relevant sidewalk area were broken, and (5) a picture taken approximately a week after his injury showing the gouge in the sidewalk.

Taken together, these allegations and evidence adequately show as a legal matter that the sidewalk was in a "dangerous condition . . . of a particular character other than solely a vertical discontinuity." MCL 691.1402a(3)(b). Therefore, the trial court did not err by denying defendant summary disposition on this issue.

IV. NOTICE

Defendant next contends that the trial court erred by finding that it was not entitled to governmental immunity under MCL 691.1401a(2) because plaintiff failed to show defendant had actual or constructive notice of the sidewalk defect at least 30 days before his injuries occurred. We disagree.

If liability allegedly arises from a sidewalk defect, a plaintiff must meet additional notice-based requirements. Under MCL 691.1402a(2),

> A municipal corporation is not liable for breach of a duty to maintain a sidewalk unless the plaintiff proves that at least 30 days before the occurrence of the relevant injury, death, or damage, the municipal corporation knew or, in the exercise of reasonable diligence, should have known of the existence of the defect in the sidewalk.

[2] Unpublished opinions are not binding under the rule of stare decisis but can be considered for their instructive or persuasive value. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

"A defendant is 'conclusively presumed' to have knowledge of the defect 'when the defect existed so as to be readily apparent to an ordinary observant person for a period of 30 days or longer before the injury took place.' " *Bernardoni v City of Saginaw*, 499 Mich 470, 474; 886 NW2d 109 (2016), quoting MCL 691.1403. "Generally, the question of whether a street defect, otherwise actionable against the municipality, has existed a sufficient length of time and under such circumstances that the municipality is deemed to have notice is a question of fact, and not a question of law." *Bernardoni*, 499 Mich at 474 (quotation marks and citations omitted).

In *Wilson*, 474 Mich at 168, our Supreme Court held government agencies do "not have a separate duty to eliminate all conditions that make the road not reasonably safe; rather, an injury will only be compensable when the injury is caused by an unsafe condition, of which the agency had actual or constructive knowledge, which condition stems from a failure to keep the highway in reasonable repair." Thus, "[i]f the agency knows, or should have known, of the existence of the defect or condition that makes the road defective, i.e., not reasonably safe for public travel, it has only a reasonable time to repair it. If it does not do so, it can be held liable for injury or damage caused by that defect." *Id*. at 169. And the "Legislature has also indicated that knowledge and time enough to repair are conclusively presumed when the defect has been readily apparent to an ordinary observant person for 30 days or longer before the injury." *Id*.

In *Bernardoni*, the plaintiff submitted three photographs that showed "a raised portion of a sidewalk each taken from a different perspective and seemingly from a different distance." *Bernardoni*, 499 Mich at 471. Crucially, these pictures were taken approximately 30 days *after* the incident, and "[n]o evidence was submitted to establish that the condition of the sidewalk in the photographs was the same 30 days before the incident." *Id*. at 475. *Bernardoni* held that, "even when viewed in the light most favorable to [the] plaintiff, the photographs standing alone cannot permit the conclusion that the defect existed 30 days before the incident." *Id*.

This case, however, is factually distinguishable from *Bernardoni* because plaintiff submitted more evidence than just photographs of the gouge defect taken after the accident. The record indicates that, at some unknown point, by August 2019 at the latest, the pavement on the sidewalk became broken and degraded or became loose such that a gap or gouge formed on the curb portion of the sidewalk. The August 2019 Google images and June 2019 survey with a written sketch indicate that the sidewalk slabs in front of the liquor store were broken. Masood confirmed in his deposition that defendant conducted the survey and had noticed the broken slabs. He testified that the sidewalk was likely damaged when vehicles were parked on top of it. Finally, Masood confirmed that the slabs were never repaired.

Based on plaintiff's testimony, the full extent of the crack or gouge became apparent after he stepped on the curb, causing the "loose pavement" to crumble beneath his left foot. He then fell and was seriously injured after his foot got stuck. Plaintiff's testimony regarding the condition of the sidewalk at the time he fell was not rebutted and it was corroborated by the subsequent photograph that depicted a missing chunk from the curb in front of the liquor store.

The evidence plaintiff presented indicates that a jury could reasonably conclude that defendant had actual or constructive notice that the sidewalk was in a dangerous condition more than 30 days before his fall based on the evidence indicating it was already broken in 2019, got worse over time, and was never repaired. *Bernardoni*, 499 Mich at 474.

Therefore, the trial court did not err in denying defendant summary disposition based on governmental immunity.

Affirmed.

/s/ Andrew J. Lievense
/s/ Brock A. Swartzle
/s/ Philip P. Mariani