# Order

**Michigan Supreme Court**
**Lansing, Michigan**

June 11, 2025

166619



KENNETH MANN,
Plaintiff-Appellant,

v

SC: 166619
COA: 361637
Wayne CC: 21-003705-NO

CITY OF DETROIT,
Defendant-Appellee.

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On January 22, 2025, the Court heard oral argument on the application for leave to appeal the November 2, 2023 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we REVERSE Part II(B)(2) of the judgment of the Court of Appeals and REMAND this case to the Wayne Circuit Court for further proceedings consistent with this order. Defendant, the city of Detroit (the city), is not entitled to summary disposition under MCR 2.116(C)(7) because the metal stub at issue was a sidewalk defect under MCL 691.1402a.

We review de novo a trial court's decision on a motion for summary disposition, as well as the legal question of whether governmental immunity applies in a case. *Ray v Swager*, 501 Mich 52, 61-62 (2017). MCR 2.116(C)(7) allows for summary disposition when a claim is barred by "immunity granted by law." When reviewing a motion brought under MCR 2.116(C)(7), the "contents of the complaint are accepted as true unless contradicted by the documentation submitted by the movant." *Sunrise Resort Ass'n, Inc v Cheboygan Co Rd Comm*, 511 Mich 325, 333 (2023) (quotation marks and citation omitted). Unless an exception applies, the governmental tort liability act (GTLA), MCL 691.1401 *et seq*., provides immunity from tort liability for governmental agencies "engaged in the exercise or discharge of a governmental function." *Ray*, 501 Mich at 62; MCL 691.1407(1). This immunity is broad, and the statutorily created exceptions to immunity are narrowly construed. See *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 618 (1984).

In this case, plaintiff was walking along the sidewalk when he tripped over a circular metal stub that was 5 inches high and 4 inches wide. The metal stub was paved into, and protruding from, the sidewalk. Plaintiff fell backward and struck his head and back on the

pavement, seriously injuring himself. Plaintiff sued the city, and at issue here is whether the sidewalk exception to the GTLA, MCL 691.1402a, is applicable to his claim.

Historically, municipalities may have been held liable for defective public sidewalks under the highway exception to governmental immunity, MCL 691.1402, because the GTLA previously defined the term "highway" to include sidewalks, see MCL 691.1401, as amended by 2001 PA 131, and provided a two-inch rule that protected municipalities from liability for *de minimis* defects in public sidewalks, see MCL 691.1402a, as added by 1999 PA 205. See, e.g., *Robinson v City of Lansing*, 486 Mich 1, 5 (2010) (deciding whether the two-inch rule of former MCL 691.1402a(2) applied to sidewalks adjacent to state highways or only to sidewalks adjacent to county highways). In 2012, MCL 691.1402a was amended to impose an affirmative duty on municipalities to maintain all public sidewalks in reasonable repair. MCL 691.1402a(1), as amended by 2012 PA 50. MCL 691.1402a now provides, in relevant part:

> (3) In a civil action, a municipal corporation that has a 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.
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> * * *
>
> (5) In a civil action, a municipal corporation that has a duty to maintain a sidewalk under subsection (1) may assert, in addition to any other defense available to it, any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was open and obvious. [MCL 691.1402a, as amended by 2016 PA 419.]

This case asks us to determine whether the metal stub was a "defect" or "dangerous condition" "in the sidewalk" for purposes of MCL 691.1402a(3). In short, the answer is yes. Because the stub measured 5 inches tall, it created a "vertical discontinuity defect of 2 inches or more." See MCL 691.1402a(3)(a).[1] Further, the metal stub was embedded into

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[1] The dissent reasons that our conclusion would destroy a municipality's immunity from liability for injuries sustained if a pedestrian, for example, walked into a no-parking or bus stop sign. Not so. The statute refers to a "vertical *discontinuity defect*." A discontinuity

the sidewalk's concrete in the middle of the pedestrian pathway. Therefore, it created a "dangerous condition in the sidewalk itself." See MCL 691.1402a(3)(b).[2]

The city contends that the definition of "sidewalk" in MCL 691.1401(f) as a "*paved* public sidewalk" (emphasis added) limits its liability to defects in the sidewalk's pavement. But the language the Legislature used in MCL 691.1402a(3)—"vertical discontinuity . . . in the sidewalk" and "dangerous condition in the sidewalk itself"—does not limit its application to the pavement itself. The reference to "a paved public sidewalk" in MCL 691.1401(f) merely serves to limit municipalities' liability to paved public sidewalks, as opposed to unpaved or private sidewalks.

This specific fact pattern distinguishes the present case from the precedent relied upon by the Court of Appeals majority and places the metal stub at issue squarely within the scope of MCL 691.1402a(3). The Court of Appeals majority erred by focusing its analysis on factually distinguishable precedents, rather than examining the statutory language to ascertain and effectuate the Legislature's intent. See *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 410 (2022). Recognizing this unique hazard as actionable under MCL 691.1402a(3) not only aligns with the Legislature's intent to impose liability for sidewalk defects but also underscores the city's failure to address a safety risk embedded in the middle of the pedestrian pathway.

Furthermore, this conclusion is consistent with this Court's holding in *LaMeau v Royal Oak*, 490 Mich 949 (2011). In that case, which was decided prior to the revisions to MCL 691.1402a in 2012, the plaintiff died as a result of running into a guy wire, which was suspended above and anchored to a sidewalk. See *LaMeau v Royal Oak*, 289 Mich App 153, 160, 169 (2010), rev'd 490 Mich 949 (2011); see also *LaMeau*, 289 Mich App at

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indicates an irregularity or a lack of continuity, and a defect is "an imperfection or abnormality that impairs quality." Merriam-Webster.com Dictionary, defect <https://www.merriam-webster.com/dictionary/defect> (accessed May 30, 2025) [https://perma.cc/XC46-6VB8]. It is not irregular or abnormal to find a sign mounted 7 feet in the air. It is, however, irregular and abnormal to find a 5-inch metal stub embedded in the sidewalk.

[2] The dissent faults this Court for determining that the metal stub was simultaneously a "vertical discontinuity defect of 2 inches or more in the sidewalk" and a "dangerous condition in the sidewalk itself." It reasons that the one hazard cannot be both. However, 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." (Emphasis added.) Here, clearly the facts show a dangerous condition (metal stub) that also created a vertical discontinuity of 2 or more inches.

187 (TALBOT, P.J., dissenting). This factual difference is significant because the anchor in *LaMeau* did not interact directly with the plaintiff, distinguishing it from the instant case, in which the embedded defect was the direct cause of harm.

The trial court correctly denied the city's motion for summary disposition under MCR 2.116(C)(7) by concluding that the metal stub was a sidewalk defect under MCL 691.1402a. Accordingly, we reverse Part II(B)(2) of the judgment of the Court of Appeals and remand this case to the Wayne Circuit Court for further proceedings consistent with this order.

We do not retain jurisdiction.

WELCH, J. (*concurring*).

I concur fully with the majority order. I write separately only to say that the object at issue in this case, as shown in the image below, is plainly a "defect in the sidewalk" and certainly the type of hazard that the Legislature intended to guard against when it enacted MCL 691.1402a.

A metal pipe filled with cement protrudes from the center of a sidewalk panel. An ordinary 12-ounce soda can is placed next to the pipe for scale, showing that the pipe is slightly taller and about twice as wide as the can.

ZAHRA, J. (*dissenting*).

I dissent from the majority's decision to reverse the judgment of the Court of Appeals. The Court of Appeals correctly concluded that the signpost at issue was not part of the sidewalk itself, and therefore the sidewalk exception to governmental immunity is inapplicable. Because I agree with the Court of Appeals that defendant is entitled to summary disposition, I would deny leave to appeal.

## I. BACKGROUND

On April 1, 2019, plaintiff, Kenneth Mann, was walking on Greenfield Road near Puritan Avenue in the city of Detroit. As he was walking, he looked behind him to see whether a bus was coming. He then tripped over a metal post stub that was protruding from the sidewalk in front of him. The stub was over five inches tall and four inches wide and was the remnant of a street sign installed before the sidewalk existed, when the area was grass-covered.

Plaintiff sued the defendant city of Detroit, alleging that it failed to maintain the sidewalk in reasonable repair as required by MCL 691.1402a of the governmental tort liability act (GTLA), MCL 691.1401 *et seq*. Defendant moved for summary disposition under MCR 2.116(C)(7) based on immunity under the GTLA, arguing that the hazard was open and obvious and that the sidewalk exception to immunity did not apply because the signpost was not itself part of the sidewalk. The trial court denied defendant's motion, finding that genuine issues of material fact existed regarding whether the sidewalk was maintained in reasonable repair under MCL 691.1402a. In doing so, the trial court agreed with plaintiff that the protrusion from the sidewalk constituted an imperfection in the sidewalk itself.

In an unpublished per curiam opinion, the Court of Appeals reversed the trial court and remanded for entry of an order granting summary disposition in favor of defendant.[3] A majority of the Court of Appeals agreed with defendant that the signpost was not part of the sidewalk and therefore no exception to governmental immunity applied. A dissenting judge would have affirmed the trial court's ruling denying summary disposition to defendant.

Plaintiff sought leave to appeal in this Court, and we ordered oral argument on the application, asking the parties to address whether the sidewalk exception applies to the metal pole protruding from the sidewalk.[4]

## II. ANALYSIS

Under the GTLA, governmental agencies enjoy "broad immunity from tort liability . . . whenever they are engaged in the exercise or discharge of a governmental function[.]"[5] There are several narrow exceptions to this grant of immunity. At issue in

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[3] *Mann v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2023 (Docket No. 361637).

[4] *Mann v Detroit*, 513 Mich 1120 (2024).

[5] *Plunkett v Dep't of Transp*, 286 Mich App 168, 181 (2009) (quotation marks and citation omitted; alteration in original); see also MCL 691.1407(1) ("Except as otherwise provided

this case is the "sidewalk exception" set forth in MCL 691.1402a, which provides in relevant part as follows:

> (1) A municipal corporation in which a sidewalk is installed adjacent to a municipal, county, or state highway shall maintain the sidewalk in reasonable repair.
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> (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.
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> (3) In a civil action, a municipal corporation that has a 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.
>
> (4) Whether a presumption under subsection (3) has been rebutted is a question of law for the court.
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> (5) In a civil action, a municipal corporation that has a duty to maintain a sidewalk under subsection (1) may assert, in addition to any other defense available to it, any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was open and obvious.

MCL 691.1401(f) defines "sidewalk" (except as used in MCL 691.1401(c)) as "a paved public sidewalk intended for pedestrian use situated outside of and adjacent to the improved portion of a highway designed for vehicular travel."

Pursuant to this framework, it is only where a defect constitutes part of the sidewalk itself that a court will proceed to analyze whether a plaintiff has satisfied the requirements

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in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.").

of MCL 691.1402a(3)(a) and (b),[6] under which a plaintiff must rebut the presumption that a municipal corporation maintained the sidewalk in reasonable repair. Consequently, if the signpost at issue in this case is not part of the sidewalk, then we need not consider whether the conditions set forth in MCL 691.1402a(3)(a) and (b) have been satisfied. A majority of this Court reverses the judgment of the Court of Appeals, holding that defendant is not entitled to summary disposition under MCR 2.116(C)(7) because the remnants of the signpost at issue constitute a sidewalk defect under MCL 691.1402a. I would instead deny leave to appeal.

It is unnecessary for the Court to identify exactly what types of sidewalk defects fall within the scope of MCL 691.1402a to resolve this case. This is because the signpost sticking out of the sidewalk was not itself part of the sidewalk, a prerequisite for application of the sidewalk exception. The defect at issue was a significant stub or base of a signpost that stood markedly above the sidewalk. It consisted of a conspicuous metal cylinder that protruded from the sidewalk. The post did not operate as a footpath indistinguishable from the cement pavement itself but consisted of a raised and prominent object on top of the walking path. Under these facts, I conclude that the post was distinct from the sidewalk rather than part of the sidewalk itself. Notably, the highway exception expressly excludes from the definition of a "highway" (which incorporates sidewalks) objects including a "utility pole."[7] The fact that a utility pole is specifically excluded from the definition of a highway suggests that the remainder of the pole at issue here likewise does not fall under the sidewalk exception.[8]

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[6] Pursuant to MCL 691.1402a(1), a municipal corporation has a duty to "maintain *the sidewalk* in reasonable repair." (Emphasis added.) A defendant is liable for breach of this duty only if a plaintiff can show that at least 30 days before his injury, the municipal corporation "knew or, in the exercise of reasonable diligence, should have known of the existence of the defect *in the sidewalk*." MCL 691.1402a(2) (emphasis added). I agree with the Court of Appeals that the key inquiry is whether *the sidewalk* is defective, necessitating a threshold inquiry of whether the signpost at issue is itself part of the sidewalk.

[7] MCL 691.1401(c).

[8] Nor do any other applicable statutes support the majority's holding. The definition of a "sidewalk" set forth in MCL 691.1401(f) extends to the surface that is designed for pedestrian use, without indication that it extends to objects that are located on top of the paved path. And MCL 691.1402a(3)(b), which the majority applies, requires a dangerous condition to be "in the sidewalk itself."

Even if one accepts that the definition of a sidewalk includes items embedded in it, like the post in this case, the majority order remains illogical. First, the order holds that this sidewalk falls within the very narrow exception to governmental immunity because, at five

As the Court of Appeals noted, caselaw also supports its holding. In *LaMeau v Royal Oak*,[9] this Court declined to expand the definition of "sidewalk" to a guy wire that was connected to the end of the sidewalk. Despite the fact that the end of the guy wire was cemented in the sidewalk, this Court adopted the position of the dissent in the Court of Appeals that the anchor and the wire extending from it were not "part of the sidewalk" and that "sidewalk defects [are limited] to imperfections occurring in the walkway itself."[10] In *Weaver v Detroit*,[11] the Court of Appeals held that a streetlight pole was not part of a "highway" under the highway exception to governmental immunity.[12] And in *Ali v*

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inches in height, it created a "vertical discontinuity defect of 2 inches or more" under MCL 691.1402a(3)(a). By this logic, every signpost embedded in a municipal sidewalk would create a hazard for which the municipality is not immune. Had plaintiff sustained injury by walking into a post identifying the area as a bus stop or a no-parking zone, the municipality would not be immune, because the post on which the sign is attached would create a "vertical discontinuity defect of 2 inches or more . . . ." But this is clearly not what the Legislature intended when creating this narrow exception to the broad grant of governmental immunity. As previously mentioned, MCL 691.1401(c) excludes from the definition of highways and sidewalks objects such as utility poles, thus suggesting that other poles on and around highways and sidewalks are outside the highway exception to governmental immunity. Alternatively, the majority order focuses on MCL 691.1402a(3)(b), claiming that immunity is waived because the signpost was "[a] dangerous condition in the sidewalk itself . . . ." But MCL 691.1402a(3)(b) requires more. This dangerous condition must be "of a particular character other than solely a vertical discontinuity." *Id.* But what is the danger of which plaintiff complains? It is nothing more than the fact that the post protrudes from the cement to a height greater than two inches. Contrary to the majority's assertion, I do not claim that a hazard can never simultaneously constitute a "vertical discontinuity defect of 2 inches or more in the sidewalk" and a "dangerous condition in the sidewalk itself." As the majority notes, the language of 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 these categories. I note only that the majority order articulates no dangerous condition in the sidewalk itself other than the claim of vertical discontinuity. That is, the majority order does not explain why the stub at issue in this case is dangerous apart from the extent of its vertical discontinuity, blending MCL 691.1402a(3)(a) and (b) together.

[9] *LaMeau v Royal Oak*, 490 Mich 949 (2011).

[10] *LaMeau v Royal Oak*, 289 Mich App 153, 187-188 (2010) (TALBOT, J., dissenting), rev'd 490 Mich 949 (2011).

[11] *Weaver v Detroit*, 252 Mich App 239, 245 (2002).

[12] See MCL 691.1402(1).

*Detroit*,[13] the Court of Appeals held that a bus passenger shelter that collapsed on the plaintiff did not fall under the highway exception, because the exception did not "include fixtures attached to the sidewalk." The Court of Appeals there explained that the "Legislature's exclusion of light poles and trees from the scope of the highway exception evinces its intent that the exception not include fixtures."[14]

This caselaw is generally supportive of the Court of Appeals' holding here. The signpost is not an imperfection in the walkway itself, and it did not become part of the sidewalk merely because its base was embedded in the sidewalk. Although this caselaw was decided under a former version of the highway exception and the current sidewalk exception is contained in an independent and more detailed provision, the highway exception similarly provided, then as now, that "[e]ach 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."[15] And the prior version of MCL 691.1401(c), then codified at MCL 691.1401(e), also defined "highway" to include a "sidewalk."[16] Thus, the prior version of the highway exception required a city to maintain a sidewalk in reasonable repair, just as the current version of the sidewalk exception does. The cited decisions therefore remain instructive.

The majority order claims that the result reached in the instant case is consistent with this Court's holding in *LaMeau*, because in that case, it was the suspended guy wire that was connected to an anchor cemented in the sidewalk that fatally injured the plaintiff's decedent. But this distinction seems to require that the defect must be embedded in the sidewalk *and* the embedded portion of the object must cause the injury. As the Court of Appeals acknowledged, it is unclear under the majority's logic "the exact point at which an object that is embedded into the sidewalk—but also extends above the sidewalk—would be akin to the stub in this case and at which point it would be similar to the guy wire in *LaMeau*."[17] If the majority's holding is that an object must be fully embedded in a sidewalk in order for it to fall under the sidewalk exception, then the post here would not satisfy this standard given that only the base of the post was embedded in the sidewalk. If the majority's holding is that the embedded portion of the object must cause the injury, this

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[13] *Ali v Detroit*, 218 Mich App 581, 588 (1996).

[14] *Id*. at 589 (citation omitted).

[15] MCL 691.1402(1) (emphasis added). The version of this passage in effect before March 25, 1996, was identical but for its reference to "any highway" rather than "a highway." See 1990 PA 278; 1996 PA 150.

[16] See 1986 PA 175; 2012 PA 50.

[17] *Mann*, unpub op at 6 n 3.

standard is still not satisfied if it was the portion of the post that protruded into the air that caused plaintiff to fall. The Court of Appeals made this same point, noting that "if we were to apply the dissent's logic to this case, we would have to conclude that the portion of the sign post that is connected to, but nevertheless above, the sidewalk is not part of the sidewalk and, therefore, [plaintiff] was not injured by what the dissent believes is a sidewalk defect."[18]

Ultimately, this is a fact-specific issue that the Court of Appeals appropriately resolved under the applicable statutory framework. I would conclude that the metal post at issue in this case was not part of the sidewalk itself, ending the inquiry under MCL 691.1402a. Because the Court of Appeals reached the correct result, I would deny leave to appeal.

HOOD, J., did not participate because the Court considered this case before he assumed office.

[18] *Id.*