

SUPREME COURT OF MICHIGAN

Lash v. City of Traverse City, 479 Mich. 180

735 N.W.2d 628 (2007) · No. No. 131632 (Calendar No. 3) · Decided July 18, 2007

SUMMARY

The Michigan Supreme Court held that the 20-mile distance permitted for public-employee residency requirements under MCL 15.602(2) must be measured in a straight line from the employee’s residence to the nearest boundary of the public employer. Although Traverse City’s residency requirement violated the statute, the Court held that the statute did not authorize a private cause of action for money damages against the governmental entity. The Court affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Young, J.; Taylor, C.J.; Corrigan, J.; Markman, J.; Cavanagh, J.; Weaver, J.; Kelly, J.
JURISDICTION	Michigan
DECIDED	July 18, 2007
DOCKET	No. 131632 (Calendar No. 3)
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City appealed by leave from a published Michigan Court of Appeals decision that held the residency distance had to be measured radially and that a private cause of action for damages was available. The Michigan Supreme Court reviewed the statutory interpretation and private-remedy issues after the trial court had granted the City summary disposition.
STANDARD OF REVIEW	Statutory interpretation and the grant or denial of summary disposition are reviewed de novo.
PRECEDENTIAL VALUE	Published precedential Michigan Supreme Court opinion
PARTIES	City of Traverse City v. Joseph Lash

TOPICS

- statutory interpretation
- municipal law
- employment law
- remedies
- appellate procedure

PRACTICE AREAS

statutory interpretation

municipal law

employment law

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the 20-mile distance permitted by MCL 15.602(2) must be measured by straight-line radial miles or by road miles.
2. Whether Traverse City's residency requirement violated MCL 15.602(2).
3. Whether MCL 15.602 creates or permits an implied private cause of action for monetary damages against a governmental entity.

HOLDINGS

1. The 20-mile distance permitted by MCL 15.602(2) must be measured in a straight line between the employee's place of residence and the nearest boundary of the public employer, not by the shortest route of public travel.
2. Traverse City's requirement that an employee reside within 15 radial miles or 20 road miles of the nearest city limit violated MCL 15.602(2).
3. MCL 15.602 does not create or permit an implied private cause of action for money damages against a governmental entity absent express legislative authorization.

KEY QUOTATIONS

"We therefore hold that, where a public employer requires an employee to reside 20 miles from the employer's nearest boundary as permitted by MCL 15.602(2), this distance is properly measured in a straight line between the employee's place of residence and the nearest boundary of the public employer." (479 Mich. at 191)

"We hold that the 20-mile distance permitted in MCL 15.602(2) is to be measured in radial miles between the nearest boundary of the public employer and the employee's place of residence." (479 Mich. at 197)

"However, we also hold that plaintiff may not maintain a private cause of action for money damages for violation of the statute because nothing in the statute creates such a cause of action." (479 Mich. at 197)

FACTUAL BACKGROUND

Joseph Lash, a Flint police sergeant, applied to become a patrol officer for Traverse City. The City's hiring materials required applicants to reside within 15 radial miles or 20 road miles of the nearest city limit. Lash's property was within 20 radial miles but 23 road miles from the City boundary, so the City rescinded his conditional employment offer after he declined to satisfy the residency requirement. He sued for monetary damages, alleging that the residency requirement violated MCL 15.602.

PROCEDURAL HISTORY

Lash applied for a patrol-officer position with Traverse City but was denied employment because his residence was 23 road miles, although within 20 radial miles, of the City's nearest boundary. The trial court granted the

City summary disposition, holding that the statute permitted road-mile measurement but also that a private cause of action existed. The Court of Appeals affirmed in part, reversed in part, and remanded. The Michigan Supreme Court affirmed in part, reversed in part, and remanded for further proceedings consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for further proceedings consistent with the opinion, including recognition that the residency requirement violated MCL 15.602(2) but that plaintiff could not maintain a private damages action against the City.

CASES CITED

- Lash v. Traverse City, 271 Mich. App. 207, 720 N.W.2d 760 (2006)
- Jenkins v. Patel, 471 Mich. 158, 684 N.W.2d 346 (2004)
- Maiden v. Rozwood, 461 Mich. 109, 597 N.W.2d 817 (1999)
- Koontz v. Ameritech Services, Inc., 466 Mich. 304, 645 N.W.2d 34 (2002)
- People v. Derror, 475 Mich. 316, 715 N.W.2d 822 (2006)
- Kroger Co. v. Liquor Control Commission, 366 Mich. 481, 115 N.W.2d 377 (1962)
- Helder v. Sruba, 462 Mich. 92, 611 N.W.2d 309 (2000)
- Robertson v. DaimlerChrysler Corp., 465 Mich. 732, 641 N.W.2d 567 (2002)
- Mudel v. Great Atlantic & Pacific Tea Co., 462 Mich. 691, 614 N.W.2d 607 (2000)
- Detroit Trust Co. v. Granger, 278 Mich. 152, 270 N.W. 239 (1936)
- Burke v. Chief of Police of Newton, 374 Mass. 450, 373 N.E.2d 949 (1978)
- Pompey v. General Motors Corp., 385 Mich. 537, 189 N.W.2d 243 (1971)
- Gardner v. Wood, 429 Mich. 290, 414 N.W.2d 706 (1987)
- Mack v. Detroit, 467 Mich. 186, 649 N.W.2d 47 (2002)
- People v. Anstey, 476 Mich. 436, 719 N.W.2d 579 (2006)
- Office Planning Group, Inc. v. Baraga-Houghton-Keweenaw Child Development Board, 472 Mich. 479, 697 N.W.2d 871 (2005)
- Grand Traverse County v. Michigan, 450 Mich. 457, 538 N.W.2d 1 (1995)
- White v. Chrysler Corp., 421 Mich. 192, 364 N.W.2d 619 (1984)
- Sun Valley Foods Co. v. Ward, 460 Mich. 230, 596 N.W.2d 119 (1999)
- Omne Financial, Inc. v. Shacks, Inc., 460 Mich. 305, 596 N.W.2d 591 (1999)
- Michigan Coalition of State Employee Unions v. Civil Service Commission, 465 Mich. 212, 634 N.W.2d 692 (2001)
- Updegraff v. Attorney General, 298 Mich. 48, 298 N.W. 400 (1941)

- *Finlayson v. West Bloomfield Township*, 320 Mich. 350, 31 N.W.2d 80 (1948)
- *Hanson v. Mecosta County Road Commissioners*, 465 Mich. 492, 638 N.W.2d 396 (2002)

OPINION

PER CURIAM.

735 N.W.2d 628 (2007) Joseph LASH, Plaintiff-Appellee, v. CITY OF TRAVERSE CITY, Defendant-Appellant. No. 131632 (Calendar No. 3). Supreme Court of Michigan. Argued March 6, 2007. Decided July 18, 2007. *630 Law Office of Glen N. Lenhoff (by Glen N. Lenhoff, Michael E. Freifeld, and Robert D. Kent-Bryant), Flint, for the plaintiff. Plunkett & Cooney, P.C. (by Mary Massaron Ross and Gretchen L. Olsen), Detroit, for the defendant.

Garan Lucow Miller, P.C. (by Rosalind Rochkind), Detroit, for Michigan Municipal League, amicus curiae. *631 OPINION YOUNG, J. At issue in this case is the proper construction of MCL 15.602, a statute that limits the restrictions public employers may make regarding employee residency. While the statute does not allow an employer to require an employee to live in any specific geographic area, it does permit a public employer to require that an employee reside within a distance of 20 miles or more from the public employer's nearest boundary.

Plaintiff alleges that he was denied employment with defendant because the city imposed a residency requirement and measured the requirement in "road miles" rather than "radial miles." [1] When measured in road miles, the distance between plaintiff's residence and defendant's nearest boundary was greater than that allowed by the city's residency requirement.

Plaintiff contends that this residency requirement violates MCL 15.602(2), and seeks monetary damages for defendant's refusal to hire him. We hold that the 20-mile distance permitted in MCL 15.602(2) is to be measured in a straight line between the employee's place of residence and the nearest boundary of the public employer.

Because defendant's residency requirement demands that an employee reside within 15 radial miles of the nearest city limit, defendant's residency requirement contravenes MCL 15.602(2). However, while defendant has violated the statute, nothing in the statute permits plaintiff to maintain a private cause of action for money damages.

Moreover, no private right of action to recover money damages may be inferred because defendant is a governmental entity that is entitled to immunity unless the Legislature has explicitly authorized suits by citizens against the governmental entity.

We therefore hold that there is no private right of action for a violation of MCL 15.602(2). The decision of the Court of Appeals is affirmed in part, reversed in part, and we remand this case to the trial court for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL BACKGROUND Plaintiff, a police sergeant with the city of Flint, responded to an advertisement seeking applicants for patrol officers with defendant's police department. The advertisement expressly outlined defendant's residency requirement: "A residency requirement of 15 miles radius, or 20 road miles, from the nearest City limit will be enforced for selected candidates." [2] Plaintiff was interviewed in December 2002.

Subsequently, he received a letter indicating that his interview was successful and that further action would be taken as vacancies arose. The following month, plaintiff purchased a 30-acre parcel of property in Thompsonville, Michigan.

The property is located outside the 20-mile limit if measured in road miles, but is within the 20-mile limit if measured in radial miles. In August 2003, after the candidate list expired, defendant again solicited applicants *632 for patrol officers, outlining the same residency requirement. Plaintiff reapplied and was reinterviewed for the position.

In March 2004, plaintiff was offered conditional employment, contingent on his passing a physical examination, a physical endurance test, and a psychological examination. [3] As part of a routine preemployment background investigation, defendant discovered that plaintiff's property was 23 road miles from the nearest city limit. Plaintiff was advised that the hiring process would not continue unless he complied with defendant's residency requirement.

Plaintiff refused to meet the residency requirement and suggested that the city renegotiate the collective bargaining agreement to relax the requirement. Plaintiff's suggestion was rejected. Because plaintiff refused to comply with defendant's residency requirement, defendant rescinded the conditional offer of employment and cancelled the scheduled testing.

In September 2004, plaintiff filed the instant lawsuit against defendant, seeking only monetary damages for defendant's "unlawful failure to hire" him. Plaintiff claimed that defendant's residency requirement violated MCL 15.602 because it required plaintiff to reside closer than 20 miles from defendant's nearest boundary as measured on a radial basis. Defendant moved for summary disposition, claiming that its residency requirement was valid because the proper measurement under the statute was road miles, and that plaintiff's property did not fall within the requirement.

Defendant further argued that plaintiff had failed to state a claim because the statute did not create a private cause of action. Lastly, defendant argued that plaintiff suffered no compensable damages because he continued to work as a Flint police officer, earning greater wages than he would have earned with defendant.

In addition to suffering no wage loss, defendant noted that plaintiff's Thompsonville property had appreciated in value. In response, plaintiff observed that MCL 15.602 did not specify road miles as the proper basis of measurement, and contended that a private cause of action was permissible because it provided the only effective redress for the statutory violation.

While plaintiff did not claim wage loss damages, he insisted that he had incurred other monetary damages, including mileage expenses incurred during the two employment interviews, "continuing private school expenses" for his children in Flint, costs associated with the purchase and repair of the Thompsonville property, and damages related to his spouse's claimed lost job opportunity in Flint.

The trial court granted summary disposition to defendant, holding that the statutory distance was properly measured in road miles, because the "purpose of the statute" was to ensure that an employee could travel to work within a reasonable time.

The trial court also held that a private cause of action could be maintained because there was "no other way to enforce" the statute. In a published opinion, the Court of Appeals affirmed in part, reversed in part and remanded to the trial court for further proceedings.[4] Regarding the proper means of measurement, two members of the panel held that the distance provided *633 in MCL 15.602(2) was to be measured in radial miles rather than road miles.

A different configuration of panel members held that the statute permitted a private cause of action for money damages. This Court granted defendant's application for leave to appeal.[5] II. STANDARDS OF REVIEW AND STATUTORY CONSTRUCTION Addressing the issues presented in this case requires that we interpret MCL 15.602. Issues of statutory interpretation are questions of law that this Court reviews de novo.[6] Similarly, we review the trial court's decision to grant or deny summary disposition de novo.[7] When interpreting a statute, our primary obligation is to ascertain and effectuate the intent of the Legislature.[8] To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language.[9] When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted.[10] III.

ANALYSIS A. THE STATUTE MCL 15.602 states in relevant part as follows: (1) Except as provided in subsection (2), a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2) Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer.

However, the specified distance shall be 20 miles or another specified distance greater than 20 miles. * * * (4) Subsection (1) does not apply if the person is a volunteer or paid on-call firefighter, an elected official, or an unpaid appointed official.

The plain language of § 1 describes the general prohibition against residency requirements a public employer "shall not require" that a person reside within a specific geographic area or within a specific distance or travel time from the employee's workplace as a condition of employment. While § 1 indicates what a public employer may not require, § 2 provides an exception and describes what residency limitations a public employer may require as a condition of employment.

Under § 2, an employer may require that an employee reside within a specified distance from the nearest boundary of the public employer, without regard to the employee's place of employment, as long as that specified distance is 20 miles or greater. *634 Lastly, § 4 describes the categories of employees to whom the general prohibition against residency requirements described in § 1 is never applicable.

A public employer may require on-call firefighters, elected officials, and unpaid appointed officials to reside in a specific geographic area or within a specified distance or travel time from the workplace as a condition of employment. B. THE METHOD OF MEASUREMENT UNDER MCL 15.602(2) Defendant maintains that the Legislature's failure to define the method of measuring the 20-mile minimum distance in § 2 renders the statute ambiguous, because the term "20 miles" is susceptible to being measured in either radial miles or road miles.

Moreover, defendant claims that this ambiguity is easily resolved by looking to the "purpose" of the statute, which defendant claims is to ensure that employees' travel time "is not too long." However, we reject defendant's claim that the statute is ambiguous.

As an initial matter, the plain meaning of the word "mile" is a measurement of a distance totaling 5,280 feet.[11] Nothing in the ordinary definition of the word indicates that this distance is to be measured along available routes of public travel.[12] Certainly, had the Legislature desired that the permissible residency restriction be measured in "road miles" or along roadways it surely could have said so.[13] We presume that the Legislature intended the common meaning of the words used in the statute, and we may not substitute alternative language for that used by the Legislature. [14] Because inserting the word "road" before "miles" in the statute subverts the plain language of the statute, defendant's preferred interpretation fails.[15] The context of the statute provides further support for the conclusion that the distance stated in MCL 15.602(2) is to be measured linearly.

The statute specifically provides that the 20-mile distance is to be measured from an employee's property to the nearest boundary of the public employer. In contrast to use of the phrase "nearest road," for example, use of the phrase "nearest boundary" does not contemplate a travel route, because the nearest boundary of the public employer might be in a field, in the middle of a lake, or in a backyard.

Thus, the fact that the statute specifies one terminus without consideration of navigability further militates *635 in favor of measuring the permissible residency requirement in radial miles. We

also observe that defendant's claimed statutory "purpose" is completely contrary to the structure of the statute. Defendant claims that road miles are the proper method of measurement because the "purpose" of MCL 15.602(2) is to ensure that an employee's "travel time to get to work is not too long."

Defendant notes that efficient travel time "is especially critical" for police, fire, or emergency personnel. However, the general prohibition on residency requirements contained in § 1 prohibits an employer from requiring that an employee reside within either a "specified distance" or "travel time" from the employee's workplace.

In contrast, the permissible parameter contained in the § 2 exception allows an employer to impose a residency requirement that is a "specified distance" from the nearest municipal boundary. The issue of travel time is conspicuously absent in § 2, indicating that travel time is not a permitted consideration when imposing a residency requirement.

Moreover, while the Legislature could certainly have excepted police or other emergency personnel from the general residency requirement prohibition, MCL 15.602(4) indicates that only on-call firefighters, elected officials, and unpaid appointed officials are excluded from the prohibition stated in MCL 15.602(1).

We therefore hold that, where a public employer requires an employee to reside 20 miles from the employer's nearest boundary as permitted by MCL 15.602(2), this distance is properly measured in a straight line between the employee's place of residence and the nearest boundary of the public employer.

Because defendant's residency requirement obligated plaintiff to reside within 15 radial miles or 20 road miles from defendant's limit, its residency requirement is violative of the statute.[16] C. PRIVATE CAUSE OF ACTION UNDER MCL 15.602 Having concluded that defendant's residency requirement contravenes the statute, the remaining issue is whether plaintiff may maintain a private cause of action for money damages against defendant.

While the statute does not explicitly provide for a private cause of action, plaintiff claims that a cause of action should be inferred, because without it plaintiff would have no adequate mechanism to enforce the act.

The Court of Appeals majority[17] stated that the "rule for inferring rights of action" is found in a footnote in *Pompey v. Gen Motors Corp.*[18] In *Pompey*, it was noted that where no common-law remedy existed, the remedy provided by statute was the sole remedy.

In a footnote following that general proposition, the *Pompey* Court noted "two important qualifications" to this rule of exclusivity, stating that "the *636 statutory remedy is not deemed exclusive if such remedy is plainly inadequate, or unless a contrary intent clearly appears." [19] In

Gardner v. Wood,[20] the issue presented was whether a civil cause of action for damages could be maintained against a premises owner for violation of the bottle club act, MCL 436.26c.

Gardner held that, when a statute is silent concerning whether a private remedy is available for a statutory violation, a court may infer a private cause of action "if it determines that the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision...."[21] Utilizing a test derived from the Second Restatement of Torts, Gardner held that a cause of action could be created to redress a statutory violation where the purpose of the statute at issue was "found to be exclusively or in part "(a) to protect a class of persons which includes the one whose interest is invaded, and "(b) to protect the particular interest which is invaded, and "(c) to protect that interest against the kind of harm which has resulted, and "(d) to protect that interest against the particular hazard from which the harm results." [22] While the four-factor test focused exclusively on the purpose of the statute, Gardner further observed that the purpose of the statute alone was an insufficient basis for inferring a private right of action.

Rather, Gardner held that the "determination [to infer a private cause of action] should not only be consistent with legislative intent, but should further the purpose of the legislative enactment." [23] Gardner held that a cause of action could not be maintained because it was inconsistent with the intent of the Legislature, indicating that the imposition of a private cause of action was "a matter for legislative resolution." [24] Similarly, subsequent decisions *637 of this Court have refused to impose a remedy for a statutory violation in the absence of evidence of legislative intent. [25] In this case, we need not consider either the factors articulated in Gardner or the footnote in Pompey because neither case may be properly extended to allow a private cause of action for money damages to be implied against a governmental entity such as defendant. [26] Without "express legislative authorization," a cause of action cannot be created "in contravention of the broad scope of governmental immunity.... "[27] Here, there is no express authorization permitting a private cause of action against a public employer for violation of MCL 15.602(2), nor is there any evidence that the Legislature intended such a remedy.

Because the words of a statute provide the most reliable evidence of the Legislature's intent, we look there to discern it, [28] and may not speculate regarding that intent beyond those words expressed in the statute. [29] A "public employer" is defined under MCL 15.601(a) as a political subdivision of the state. [30] Political subdivisions such as defendant enjoy immunity from tort liability under the governmental tort liability act (GTLA), MCL 691.1401 et seq. [31] Under the GTLA, the defendant is immune from tort liability "unless the Legislature has pulled back the veil of immunity and allowed suit by citizens against the government." [32] The GTLA permits a cause of action to be brought against a governmental agency in only six discrete areas, none of which is relevant here. [33] In addition, the Legislature has elsewhere created causes of action against political *638 subdivisions of the state. [34] In fact, chapter 15 of the Michigan Compiled Laws is replete with instances where the Legislature has explicitly permitted actions for monetary damages

against municipalities and their employees.[35] However, none of these exceptions can be interpreted to permit a suit for violation of the permitted residency requirement described in MCL 15.602(2).

Rather, the fact that the Legislature has explicitly permitted damage suits in other provisions of chapter 15 provides persuasive evidence that the Legislature did not intend to create a private cause of action for violation of this particular provision.

Moreover, plaintiff's claim that a private cause of action for monetary damages is the only mechanism by which the statute can be enforced is incorrect. Defendant could enforce the statute by seeking injunctive relief pursuant to MCR 3.310, or declaratory relief pursuant to MCR 2.605(A)(1).[36] A preliminary injunction may be granted under MCR 3.310(A) where plaintiff can make a particularized showing of irreparable harm that will occur before the merits of the claim are considered.[37] Moreover, an "actual controversy" exists for the purposes of a declaratory judgment where a plaintiff pleads and proves facts demonstrating an adverse interest necessitating a judgment to preserve the plaintiff's legal rights.[38] In this case, plaintiff's claim is that defendant's residency requirement, made a condition of plaintiff's employment, was in violation of MCL 15.602(2).

Such a claim would constitute an "actual controversy" for the purposes of an action for a declaratory judgment. Plaintiff claims that these remedies are "an illusion," because enforcing the statute by seeking declaratory or injunctive relief would "likely be costly."

However, plaintiff cites no authority, and we are aware of none, that would permit the creation of a cause of action for monetary damages in contravention of governmental immunity simply because other available remedies are less economically advantageous to plaintiff. It is not within *639 the authority of the judiciary "to redetermine the Legislature's choice or to independently assess what would be most fair or just or best public policy." [39] Rather, the relief that plaintiff seeks must be provided by the Legislature.

IV. CONCLUSION We hold that the 20-mile distance permitted in MCL 15.602(2) is to be measured in radial miles between the nearest boundary of the public employer and the employee's place of residence. In this case, the residency requirement demanded by defendant contravenes MCL 15.602(2).

However, we also hold that plaintiff may not maintain a private cause of action for money damages for violation of the statute because nothing in the statute creates such a cause of action. We affirm in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion. TAYLOR, C.J., CORRIGAN and MARKMAN, JJ., concur. MICHAEL F. CAVANAGH, J. (concurring in part in the result and dissenting in part).

I concur with the majority that the 20-mile distance permitted in MCL 15.602(2) is to be measured in a straight line between the employee's place of residence and the nearest boundary of the public employer. I dissent, however, because I believe that the statute allows plaintiff to maintain a private cause of action for money damages for a violation of the statute.

The lack of any remedy in the statute presents a problem. See *Pompey v. Gen. Motors Corp.*, 385 Mich. 537, 552 n. 14, 189 N.W.2d 243 (1971). A violation of the statute has significant consequences for an employee or potential employee.

For example, a potential employee may not be hired or a current employee may have his employment terminated or may not receive a promotion. But an employee or potential employee may not learn of this statutory violation until the only possible effective remedy is one for monetary damages.

Thus, I would affirm the Court of Appeals on this issue and hold that a private cause of action does exist for a violation of the statute. *WEAVER, J.*, concurs. *MARILYN KELLY, J.* (concurring in part and dissenting in part). Consistent with this Court's unfortunate decision in *Mack v. Detroit*, [1] the doctrine of governmental immunity bars plaintiff's cause of action here.

Hence, no useful purpose is served by interpreting MCL 15.602 or deciding whether a private cause of action exists under the statute. The majority's discussion of these two issues is only dictum. However, because the majority chooses to discuss these two issues, I will respond.

First, I agree that the 20-mile distance permitted in MCL 15.602 is to be measured in radial miles as opposed to road miles. Also, but for *Mack*, I believe that a private cause of action under the statute would be available to plaintiff because of defendant's violation of MCL 15.602. *640 APPLICATION OF MACK AND THE DOCTRINE OF GOVERNMENTAL IMMUNITY In *Mack*, this Court held that governmental immunity is a characteristic of government.

Mack v. Detroit, 467 Mich. 186, 190, 649 N.W.2d 47 (2002). It is no longer an affirmative defense. The party seeking to impose liability on a governmental agency has the burden of pleading in avoidance of governmental immunity. *Id.* at 198, 649 N.W.2d 47. This Court also held in *Mack* that, without "express legislative authorization," a cause of action cannot be created "in contravention of the broad scope of governmental immunity."

Id. at 196, 649 N.W.2d 47. The "presumption [under the governmental tort liability act (GTLA) [2]] is, therefore, that a governmental agency is immune and can only be subject to suit if a plaintiff's case falls within a statutory exception." *Id.* at 201, 649 N.W.2d 47 (emphasis in original). Following the rationale of *Mack*, the majority's holding that governmental immunity applies in this case is correct.

As the majority notes, political subdivisions such as defendant enjoy immunity from tort liability under the GTLA.[3] And none of the six discrete areas[4] in which the GTLA permits a cause of action to be brought applies in this case.

Moreover, there is no express authorization permitting a private cause of action against a public employer for violation of MCL 15.602(2). Therefore, under the rationale in Mack, governmental immunity applies to bar plaintiff's action. Whenever governmental immunity applies, in accordance with Mack, a plaintiff must plead in avoidance of governmental immunity.

Mack, supra at 198, 649 N.W.2d 47. In this case, plaintiff did not mention the doctrine in his pleadings or at any point in these proceedings. Accordingly, it is of no legal consequence whether the residency requirement violated MCL 15.602 or whether the statute implies a private cause of action.

However, the majority avoids acknowledging the dominant effect that governmental immunity has on this case and instead purports to hold, in addition, that (1) defendant's residency requirement contravenes MCL 15.602(2) and (2) plaintiff may not maintain a private cause of action for money damages for a violation of the statute.

In my view, since the presumption of governmental immunity was never rebutted, it remains and utterly governs the case. The majority's conclusions on other issues is nothing but dicta.[5] *641 GOVERNMENTAL IMMUNITY AS AN APPELLATE PARACHUTE Long ago, governmental immunity was viewed as a characteristic of government. Mack, supra at 222, 649 N.W.2d 47 (Cavanagh, J., dissenting).

However, this view changed once the Legislature codified the common-law doctrine of governmental immunity. Id. at 220, 649 N.W.2d 47. Because the Legislature created no presumption favoring blanket governmental immunity, the existence of immunity had to be raised by the party seeking to benefit from it. Id. Using that reasoning, Justice Cavanagh concluded in his dissent in Mack that governmental immunity is an affirmative defense.

Id. I continue to support Justice Cavanagh's dissent. I continue to believe that the better view is that governmental immunity is an affirmative defense and that the government still bears the burden of raising and proving it.

In this case, defendant listed governmental immunity as an affirmative defense in its first responsive pleading. However, it never mentioned it again until this Court asked about it. Apparently, because defendant did not mention the issue in its motion for summary disposition, the trial court did not address whether it applied.

Because defendant did not mention the issue in the Court of Appeals, that Court did not address whether it applied.[6] Similarly, defendant did not raise the issue before this Court in its

application for leave to appeal.[7] In granting leave to appeal, this Court did not order the parties to address the issue. See 477 Mich. 920, 722 N.W.2d 884 (2006). Indeed, the first time the parties[8] clearly addressed the issue of governmental immunity was at oral argument before this Court when Chief Justice Taylor raised it sua sponte.[9] Defendant ignored governmental immunity in this case until the eleventh hour.

It should not be able to ignore the doctrine in the trial court and the Court of Appeals, *642 then rely on it at the last minute before this Court. This Court should amend its holding in Mack to discourage a defendant from using governmental immunity as an appellate parachute. THE AVAILABILITY OF A PRIVATE CAUSE OF ACTION I disagree with the majority's dictum that no private cause of action is available to plaintiff.

In Pompey v. Gen Motors Corp.,[10] this Court summarized the rules of statutory interpretation that should be followed when determining whether an implied private cause of action exists to remedy a statutory violation.

We observed that [t]he general rule, in which Michigan is aligned with a strong majority of jurisdictions, is that where a new right is created or a new duty is imposed by statute, the remedy provided for enforcement of that right by the statute for its violation and nonperformance is exclusive. [Pompey v. Gen Motors Corp., 385 Mich. 537, 552, 189 N.W.2d 243 (1971).]

Significantly, the Pompey Court also noted two important exceptions to this rule: In the absence of a pre-existent common-law remedy, the statutory remedy is not deemed exclusive if such remedy is plainly inadequate... or unless a contrary intent clearly appears.... [Id. at 553 n. 14, 189 N.W.2d 243 (citations omitted).][[11]] In this case, it is undisputed that no common-law right to relief exists and MCL 15.602 does not explicitly provide a cause of action for the enforcement of its provisions.

However, using the test set forth in Pompey, I would find that the statute implies the availability of a private cause of action. MCL 15.602 creates a new right in a particular class of persons. An employee has the right not to be required by his or her employer to reside within a specific geographic area, distance, or travel time from his or her place of employment.

MCL 15.602(1). The legislative history of the statute supports the fact that the statute creates the right for an employee to be free from overly restrictive residency requirements imposed by his or her employer. The Senate Fiscal Agency bill analysis, in explaining the rationale behind the act, stated: Some people believe that these [residency] requirements unfairly infringe on what they believe is the right of the employee, as a citizen, to determine where he or she will live.

It was proposed, therefore, that a State statute should prohibit the imposition of strict residency requirements on public employees, but allow local units of government to continue to require residency within a certain proximity. [Senate Fiscal Agency Analysis, SB 198, January 10, 2000.]

The bill analysis suggests that the statute was intended to balance the employer's desire for reasonable residency requirements against the employee's right to be free from unduly strict residency requirements. When the Legislature creates a right in a statute, it must have intended that a remedy exist for a violation of the statute.

However, MCL 15.602 does not contain an *643 express remedy for its violation. The majority claims that defendant could enforce the statute by seeking injunctive relief pursuant to MCR 3.310 or declaratory relief pursuant to MCR 2.605(A)(1).

Although such equitable remedies are available, they may often be impractical in cases such as the one before us. For example, although a court may grant injunctive relief, all too frequently a defendant would not learn of the statutory violation until the job opening had been filled or eliminated. No action by the employer would remain to be enjoined. Injunctive relief would be useful, if at all, mostly for future applicants and would not assist the plaintiff.

Similar problems exist should a plaintiff bring a declaratory judgment action. It would be of no help to plaintiff in the instant case for a court to make a declaration that defendant's residency requirement is illegal. By the time the decision was issued, the job vacancy that plaintiff sought to fill would have been filled.

Accordingly, the Legislature must have intended to allow a private cause of action that includes monetary damages for an aggrieved person in response to a violation of MCL 15.602. CONCLUSION I agree with the majority's holding that, pursuant to Mack, governmental immunity bars plaintiff's action.

However, because governmental immunity applies, the majority's discussion of whether the residency requirement violates MCL 15.602(2) and whether a private cause of action exists is nothing more than dictum. Were it not for the holding in Mack, which I continue to find badly flawed, I would hold that MCL 15.602 implies a private cause of action. Also, I would hold that the 20-mile distance permitted in MCL 15.602 should be measured in radial as opposed to road miles.

Finally, but for Mack, I would hold that defendant abandoned the defense of governmental immunity. NOTES [1] As used throughout this opinion, the term "road miles" refers to measuring a distance by the shortest route of public travel.

In contrast, the term "radial miles" refers to measuring a distance in a straight line between two points. [2] This residency requirement, included in the collective bargaining agreement between defendant and the Police Officers Labor Council, is consistent with Traverse City Executive Order No. 311.

[3] These examinations were scheduled for early April 2004, approximately three weeks after the conditional offer of employment was made. However, defendant cancelled the testing after rescinding the employment offer.

[4] *Lash v. Traverse City*, 271 Mich.App. 207, 720 N.W.2d 760 (2006). [5] 477 Mich. 920, 722 N.W.2d 884 (2006). [6] *Jenkins v. Patel*, 471 Mich. 158, 162, 684 N.W.2d 346 (2004). [7] *Maiden v. Rozwood*, 461 Mich. 109, 597 N.W.2d 817 (1999).

[8] *Tryc v. Michigan Veterans' Facility*, 451 Mich. 129, 545 N.W.2d 642 (1996). [9] *Sotelo v. Grant Twp.*, 470 Mich. 95, 680 N.W.2d 381 (2004). [10] *Koontz v. Ameritech Services, Inc.*, 466 Mich. 304, 645 N.W.2d 34 (2002).

[11] Random House Webster's College Dictionary (1996), p. 859. [12] As we have noted in previous opinions, a statutory term is not rendered ambiguous merely because resort to a dictionary reveals more than one definition. *Koontz v. supra*; *People v. Derror*, 475 Mich. 316, 715 N.W.2d 822 (2006).

However, in this case the term "miles" has only one definition, which remains constant at 5,280 feet whether the distance is driven, walked, or flown. [13] See, for example, *Kroger Co. v. Liquor Control Comm.*, 366 Mich. 481, 115 N.W.2d 377 (1962). There, the Court construed a now repealed statute, MCL 436.17a, that prohibited the issuance of a retail liquor license within 500 feet of a church or school.

The statute specifically indicated that the 500-foot distance "shall be measured along the center line of the street" from the nearest part of the church or school building to the nearest part of the location seeking the liquor license. *Kroger, supra* at 484, 115 N.W.2d 377.

[14] *Helder v. Sruba*, 462 Mich. 92, 611 N.W.2d 309 (2000); *Robertson v. DaimlerChrysler Corp.*, 465 Mich. 732, 641 N.W.2d 567 (2002). [15] See *Mudel v. Great Atlantic & Pacific Tea Co.*, 462 Mich. 691, 729, 614 N.W.2d 607 (2000); *Detroit Trust Co. v. Granger*, 278 Mich. 152, 162, 270 N.W. 239 (1936); *Burke v. Chief of Police of Newton*, 374 Mass. 450, 373 N.E.2d 949 (1978).

[16] In her partially dissenting opinion, Justice Kelly opines that our analysis of the measurement of distance under MCL 15.602(2) is "only dictum," although she agrees with it. We find the logic of her contention hard to follow. Plaintiff seeks damages for defendant's refusal to hire him.

Therefore, before determining whether plaintiff may maintain a private cause of action to remedy a violation of the statute, it is imperative to first determine whether a violation exists, thus requiring an analysis of MCL 15.602(2).

Moreover, while we ultimately conclude that plaintiff may not maintain a private cause of action for money damages, plaintiff is free to seek the remedies available to him for defendant's violation of MCL 15.602(2).

[17] Lash, *supra* at 213, 720 N.W.2d 760 (opinion by Neff, J.). [18] 385 Mich. 537, 553 n. 14, 189 N.W.2d 243 (1971). [19] *Id.* (citation omitted). We need not address the dictum in the Pompey footnote that some quantum of additional remedy is permitted where a statutory remedy is "plainly inadequate."

We do note that this principle, which has never since been cited in any majority opinion of this Court, appears inconsistent with subsequent caselaw. See *Grand Traverse Co. v. Michigan*, 450 Mich. 457, 538 N.W.2d 1 (1995) (available statutory remedy precluded a private cause of action without resort to assessing its adequacy); *White v. Chrysler Corp.*, 421 Mich. 192, 206, 364 N.W.2d 619 (1984) (The Court refused to permit a tort remedy for violations of the Michigan Occupational Safety and Health Act, MCL 408.1001 *et seq.*, despite acknowledging that the statutory remedy was inadequate because it resulted "in the undercompensation of many seriously injured workers.").

[20] 429 Mich. 290, 414 N.W.2d 706 (1987). [21] *Gardner*, *supra* at 301 n. 5, 414 N.W.2d 706, quoting 4 Restatement Torts, 2d, § 874A, p. 301. [22] *Id.* at 302, quoting *Longstreth v. Gensel*, 423 Mich. 675, 692-693, 377 N.W.2d 804 (1985), quoting 2 Restatement Torts, 2d, § 286, p. 25.

[23] *Id.* at 304, 414 N.W.2d 706 (emphasis added). [24] *Id.* at 307, 414 N.W.2d 706. *Gardner* also cited with approval *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), in which the United States Supreme Court delineated several factors to be considered in determining whether a private remedy is available for a statutory violation.

However, as we noted in *Office Planning Group, Inc. v. Baraga-Houghton-Keweenaw Child Dev. Bd.*, 472 Mich. 479, 498, 697 N.W.2d 871 (2005), post-*Cort* cases have retreated from consideration of all the enumerated factors, and now focus exclusively on evidence of legislative intent "to create, either expressly or by implication, a private cause of action." (Citation omitted.)

[25] See *People v. Anstey*, 476 Mich. 436, 445 n. 7, 719 N.W.2d 579 (2006) ("Because the Legislature did not provide a remedy in the statute, we may not create a remedy that only the Legislature has the power to create."); *Office Planning Group*, *supra*; *Grand Traverse Co.*, *supra* at 465, 538 N.W.2d 1 ("[W]e cannot find a principled basis for continuation of this cause of action.

Reviewing the statute in its entirety, we hold that a plain reading of the statute simply does not support this cause of action or the relief requested."). [26] Justice Kelly's partial dissent claims that any discussion regarding whether a private cause of action may be implied for a violation of MCL 15.602 is dictum because governmental immunity bars plaintiff's action.

However, as MCL 15.602 by its own terms only applies to public employers, it is difficult to envision how these two issues are severable. Rather, governmental immunity is the reason that neither *Gardner* nor *Pompey* may be extended to permit the judicial creation of a claim for money damages against a governmental entity.

[27] *Mack v. Detroit*, 467 Mich. 186, 196, 649 N.W.2d 47 (2002). Justice Kelly acknowledges the import and precedential effect of *Mack*, but simply disagrees with that decision. [28] *Sun Valley Foods Co. v. Ward*, 460 Mich. 230, 596 N.W.2d 119 (1999).

[29] *Omne Financial, Inc. v. Shacks, Inc.*, 460 Mich. 305, 596 N.W.2d 591 (1999). [30] Specifically, MCL 15.601(a) defines "public employer" as a "county, township, village, city, authority, school district, or other political subdivision of this state and includes any entity jointly created by 2 or more public employers."

[31] See MCL 691.1401(d), defining "governmental agency" as "the state or a political subdivision." [32] *Mack*, *supra* at 195, 649 N.W.2d 47. [33] The six statutory exceptions to governmental immunity are the highway exception, MCL 691.1402; the motor vehicle exception, MCL 691.1405; the public building exception, MCL 691.1406; the governmental hospital exception, MCL 691.1407(4); the proprietary function exception, MCL 691.1413; and the sewage system event exception, MCL 691.1417.

[34] See the Civil Rights Act, MCL 37.2103(g) and MCL 37.2202(1)(a); as well as the Persons with Disabilities Civil Rights Act, MCL 37.1103(g), MCL 37.1201(b), and MCL 37.1202. [35] See the Freedom of Information Act, MCL 15.232(d)(iii) and MCL 15.240(7) (permitting actual or compensatory damages as well as punitive damages for refusing or delaying disclosure of a public record under the act); the Open Meetings Act, MCL 15.273 (permitting the recovery of up to \$500 in damages against a public official for intentional violation of the act); the standards of conduct, MCL 15.342c (permitting a civil action for actual damages for violation of MCL 15.342b); and the Whistleblowers' Protection Act, MCL 15.361(b) and MCL 15.363 (permitting a civil action for actual damages for violation of MCL 15.362).

[36] MCR 2.605(A)(1) provides the following remedy: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

[37] *Michigan Coalition of State Employee Unions v. Civil Service Comm.*, 465 Mich. 212, 225 n. 11, 634 N.W.2d 692 (2001). In addition to requiring that a moving party demonstrate irreparable harm in the absence of injunctive relief, other factors should be considered by the trial court: "(1) harm to the public interest if such an injunction is issued; (2) whether harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, and (3) the strength of the moving party's showing that it is likely to prevail on the merits."

Id. [38] *Updegraff v. Attorney General*, 298 Mich. 48, 298 N.W. 400 (1941); *Finlayson v. West Bloomfield Twp.*, 320 Mich. 350, 31 N.W.2d 80 (1948). [39] *Hanson v. Mecosta Co. Rd. Comm'rs*, 465 Mich. 492, 504, 638 N.W.2d 396 (2002).

[1] 467 Mich. 186, 649 N.W.2d 47 (2002). I continue to agree with the dissent in Mack, with which I concurred. See also *Costa v. Community Emergency Medical Services, Inc.*, 475 Mich. 403, 417-420, 716 N.W.2d 236 (2006) (Kelly, J., dissenting) (recognizing that the holding in Mack constitutes binding precedent but reiterating disagreement with the majority's resolution of that case).

[2] MCL 691.1401 et seq. [3] MCL 691.1407(1) states: "Except as otherwise provided 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." MCL 691.1401(d) defines "governmental agency" as "the state or a political subdivision."

Therefore, defendant city of Traverse City is a governmental agency for purposes of governmental immunity. As this Court recognized in Mack, the management, operation, and control of a police department is a governmental function. Mack, *supra* at 204, 649 N.W.2d 47.

[4] See MCL 691.1402 (highway exception), MCL 691.1405 (motor vehicle exception), MCL 691.1406 (public building exception), MCL 691.1407(4) (governmental hospital exception), MCL 691.1413 (proprietary function exception) and MCL 691.1417 (sewage system exception).

[5] The majority never explains why "it is imperative to first determine whether a violation [of MCL 15.602(2)] exists." Ante at 635 n. 16. Regardless of whether a violation exists, governmental immunity bars plaintiff's cause of action. Only if and when plaintiff sought injunctive or declaratory judgment relief would a court need to decide whether defendant violated MCL 15.602(2).

[6] Neither the questions presented by plaintiff nor the counter-questions presented by defendant in the Court of Appeals concerned the issue of governmental immunity. The Court of Appeals has repeatedly stated that a party abandons an issue by failing to specifically raise it in the statement of questions presented. *Ypsilanti Fire Marshal v. Kircher (On Reconsideration)*, 273 Mich.App.

496, 553, 730 N.W.2d 481 (2007), citing MCR 7.212(C)(5). [7] Defendant did not explicitly address the issue of governmental immunity before this Court. Rather, in its brief before the Court of Appeals and this Court, defendant simply stated, "If the Legislature wanted to lift immunity, MCL 691.1407 et seq., and create a private cause of action, surely it would have said so."

Other than a cursory citation of the GTLA, defendant did not attempt to argue that the act applied. Taken in context, defendant's citation of the GTLA was not in reference to any assertion that governmental immunity applies. Rather, it was in reference to the fact that there is no private cause of action.

Therefore, neither of the parties raised the issue of governmental immunity before oral argument.

[8] Although the issue of governmental immunity was raised in an amicus curiae brief, the parties

did not raise the issue.

[9] I would note that the procedural history regarding the issue of governmental immunity in this case is similar to that in *Mack*. There, the defendant city raised governmental immunity as a defense in the trial court, but failed to argue the issue in the Court of Appeals or in this Court. *Mack*, supra at 197 n. 13, 649 N.W.2d 47. It was not until oral argument in *Mack* that the issue of governmental immunity was discussed.

Id. at 226 n. 2, 649 N.W.2d 47 (Weaver, J., dissenting). So, just as the parties in this case neither briefed nor discussed whether governmental immunity applies, similarly, in *Mack*, none of the parties discussed or briefed the issue.

In *Mack*, Justice Weaver and Justice Cavanagh strongly objected to other justices' sua sponte raising and relying on governmental immunity. Their concerns echo in the instant case as well. [10] 385 Mich. 537, 189 N.W.2d 243 (1971).

[11] In *Mack*, this Court concluded that *Pompey* was applicable to claims involving private actors as opposed to public actors. *Mack*, supra at 193 n. 5, 649 N.W.2d 47. I continue to voice my disagreement with the decision. My analysis indicates how I would remedy the violation in this case.

YOUNG, J.

YOUNG, J. At issue in this case is the proper construction of MCL 15.602, a statute that limits the restrictions public employers may make regarding employee residency. While the statute does not allow an employer to require an employee to live in any specific geographic area, it does permit a public employer to require that an employee reside within a distance of 20 miles or more from the public employer's nearest boundary.

Plaintiff alleges that he was denied employment with defendant because the city imposed a residency requirement and measured the requirement in "road miles" *183rather than "radial miles."¹ When measured in road-miles, the distance between plaintiff's residence and defendant's nearest boundary was greater than that allowed by the city's residency requirement.

Plaintiff contends that this residency requirement violates MCL 15.602(2), and seeks monetary damages for defendant's refusal to hire him. We hold that the 20-mile distance permitted in MCL 15.602(2) is to be measured in a straight line between the employee's place of residence and the nearest boundary of the public employer.

Because defendant's residency requirement demands that an employee reside within 15 radial miles of the nearest city limit, defendant's residency requirement contravenes MCL 15.602(2). However, while defendant has violated the statute, nothing in the statute permits plaintiff to maintain a private cause of action for money damages.

Moreover, no private right of action to recover money damages may be inferred because defendant is a governmental entity that is entitled to immunity unless the Legislature has explicitly authorized suits by citizens against the governmental entity.

We therefore hold that there is no private right of action for a violation of MCL 15.602(2). The decision of the Court of Appeals is affirmed in part, reversed in part, and we remand this case to the trial court for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL BACKGROUND Plaintiff, a police sergeant with the city of Flint, responded to an advertisement seeking applicants for *184patrol officers with defendant's police department. The advertisement expressly outlined defendant's residency requirement: "A residency requirement of 15 miles radius, or 20 road miles, from the nearest City limit will be enforced for selected candidates."² Plaintiff was interviewed in December 2002.

Subsequently, he received a letter indicating that his interview was successful and that further action would be taken as vacancies arose. The following month, plaintiff purchased a 30-acre parcel of property in Thompson-ville, Michigan.

The property is located outside the 20-mile limit if measured in road miles, but is within the 20-mile limit if measured in radial miles. In August 2003, after the candidate list expired, defendant again solicited applicants for patrol officers, outlining the same residency requirement. Plaintiff reapplied and was reinterviewed for the position.

In March 2004, plaintiff was offered conditional employment, contingent on his passing a physical examination, a physical endurance test, and a psychological examination.³ As part of a routine preemployment background investigation, defendant discovered that plaintiff's property was 23 road miles from the nearest city limit. Plaintiff was advised that the hiring process would not continue unless he complied with defendant's residency requirement.

Plaintiff refused to meet the residency requirement and suggested that the city renegotiate the *185collective bargaining agreement to relax the requirement. Plaintiff's suggestion was rejected. Because plaintiff refused to comply with defendant's residency requirement, defendant rescinded the conditional offer of employment and cancelled the scheduled testing.

In September 2004, plaintiff filed the instant lawsuit against defendant, seeking only monetary damages for defendant's "unlawful failure to hire" him. Plaintiff claimed that defendant's residency requirement violated MCL 15.602 because it required plaintiff to reside closer than 20 miles from defendant's nearest boundary as measured on a radial basis. Defendant moved for summary disposition, claiming that its residency requirement was valid because the proper measurement under the statute was road miles, and that plaintiff's property did not fall within the requirement.

Defendant further argued that plaintiff had failed to state a claim because the statute did not create a private cause of action. Lastly, defendant argued that plaintiff suffered no compensable damages because he continued to work as a Flint police officer, earning greater wages than he would have earned with defendant.

In addition to suffering no wage loss, defendant noted that plaintiffs Thompsonville property had appreciated in value. In response, plaintiff observed that MCL 15.602 did not specify road miles as the proper basis of measurement, and contended that a private cause of action was permissible because it provided the only effective redress for the statutory violation.

While plaintiff did not claim wage loss damages, he insisted that he had incurred other monetary damages, including mileage expenses incurred during the two employment inter*186views, “continuing private school expenses” for his children in Flint, costs associated with the purchase and repair of the Thompsonville property, and damages related to his spouse’s claimed lost job opportunity in Flint.

The trial court granted summary disposition to defendant, holding that the statutory distance was properly measured in road miles, because the “purpose of the statute” was to ensure that an employee could travel to work within a reasonable time.

The trial court also held that a private cause of action could be maintained because there was “no other way to enforce” the statute. In a published opinion, the Court of Appeals affirmed in part, reversed in part and remanded to the trial court for further proceedings.⁴ Regarding the proper means of measurement, two members of the panel held that the distance provided in MCL 15.602(2) was to be measured in radial miles rather than road miles.

A different configuration of panel members held that the statute permitted a private cause of action for money damages. This Court granted defendant’s application for leave to appeal.⁵ II. STANDARDS OF REVIEW AND STATUTORY CONSTRUCTION Addressing the issues presented in this case requires that we interpret MCL 15.602. Issues of statutory interpretation are questions of law that this Court reviews de novo.⁶ Similarly, we review the trial court’s decision to grant or deny summary disposition de novo.⁷ *187When interpreting a statute, our primary obligation is to ascertain and effectuate the intent of the Legislature.⁸ To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language.⁹ When the language of a statute is unambiguous, the Legislature’s intent is clear and judicial construction is neither necessary nor permitted.¹⁰ III.

ANALYSIS A. THE STATUTE MCL 15.602 states in relevant part as follows: (1) Except as provided in subsection (2), a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance

or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2) Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer.

However, the specified distance shall be 20 miles or another specified distance greater than 20 miles. (4) Subsection (1) does not apply if the person is a volunteer or paid on-call firefighter, an elected official, or an unpaid appointed official. *188The plain language of § 1 describes the general prohibition against residency requirements — a public employer “shall not require” that a person reside within a specific geographic area or within a specific distance or travel time from the employee’s workplace as a condition of employment.

While § 1 indicates what a public employer may not require, § 2 provides an exception and describes what residency limitations a public employer may require as a condition of employment. Under § 2, an employer may require that an employee reside within a specified distance from the nearest boundary of the public employer, without regard to the employee’s place of employment, as long as that specified distance is 20 miles or greater.

Lastly, § 4 describes the categories of employees to whom the general prohibition against residency requirements described in § 1 is never applicable. A public employer may require on-call firefighters, elected officials, and unpaid appointed officials to reside in a specific geographic area or within a specified distance or travel time from the workplace as a condition of employment.

B. THE METHOD OF MEASUREMENT UNDER MCL 15.602(2) Defendant maintains that the Legislature’s failure to define the method of measuring the 20-mile minimum distance in § 2 renders the statute ambiguous, because the term “20 miles” is susceptible to being measured in either radial miles or road miles.

Moreover, defendant claims that this ambiguity is easily resolved by looking to the “purpose” of the statute, which defendant claims is to ensure that employees’ travel time “is not too long.” However, we reject defendant’s claim that the statute is ambiguous.

As an initial matter, the plain meaning of *189the word “mile” is a measurement of a distance totaling 5,280 feet.¹¹ Nothing in the ordinary definition of the word indicates that this distance is to be measured along available routes of public travel.¹² Certainly, had the Legislature desired that the permissible residency restriction be measured in “road miles” or along roadways it surely could have said so.¹³ We presume that the Legislature intended the common meaning of the words used in the statute, and we may not substitute alternative language for that used by the Legislature.¹⁴ Because inserting the word “road” before “miles” in the statute subverts the plain language of the statute, defendant’s preferred interpretation fails.¹⁵ The context of the statute

provides further support for the conclusion that the distance stated in MCL 15.602(2) is to be measured linearly.

The statute specifically provides that the 20-mile distance is to be *190measured from an employee's property to the nearest boundary of the public employer. In contrast to use of the phrase "nearest road," for example, use of the phrase "nearest boundary" does not contemplate a travel route, because the nearest boundary of the public employer might be in a field, in the middle of a lake, or in a backyard.

Thus, the fact that the statute specifies one terminus without consideration of navigability farther militates in favor of measuring the permissible residency requirement in radial miles. We also observe that defendant's claimed statutory "purpose" is completely contrary to the structure of the statute. Defendant claims that road miles are the proper method of measurement because the "purpose" of MCL 15.602(2) is to ensure that an employee's "travel time to get to work is not too long." Defendant notes that efficient travel time "is especially critical" for police, fire, or emergency personnel.

However, the general prohibition on residency requirements contained in § 1 prohibits an employer from requiring that an employee reside within either a "specified distance" or "travel time" from the employee's workplace.

In contrast, the permissible parameter contained in the § 2 exception allows an employer to impose a residency requirement that is a "specified distance" from the nearest municipal boundary. The issue of travel time is conspicuously absent in § 2, indicating that travel time is not a permitted consideration when imposing a residency requirement.

Moreover, while the Legislature could certainly have excepted police or other emergency personnel from the general residency requirement prohibition, MCL 15.602(4) indicates that only on-call firefighters, elected officials, and unpaid appointed officials are excluded from the prohibition stated in MCL 15.602(1). *191We therefore hold that, where a public employer requires an employee to reside 20 miles from the employer's nearest boundary as permitted by MCL 15.602(2), this distance is properly measured in a straight line between the employee's place of residence and the nearest boundary of the public employer.

Because defendant's residency requirement obligated plaintiff to reside within 15 radial miles or 20 road miles from defendant's limit, its residency requirement is violative of the statute.¹⁶ C. PRIVATE CAUSE OF ACTION UNDER MCL 15.602 Having concluded that defendant's residency requirement contravenes the statute, the remaining issue is whether plaintiff may maintain a private cause of action for money damages against defendant.

While the statute does not explicitly provide for a private cause of action, plaintiff claims that a cause of action should be inferred, because without it plaintiff would have no adequate mechanism

to enforce the act.

The Court of Appeals majority¹⁷ stated that the “rule for inferring rights of action” is found in a footnote in *Pompey v Gen Motors Corp.*¹⁸ In *Pompey*, it was noted *192 that where no common-law remedy existed, the remedy provided by statute was the sole remedy.

In a footnote following that general proposition, the *Pompey* Court noted “two important qualifications” to this rule of exclusivity, stating that “the statutory remedy is not deemed exclusive if such remedy is plainly inadequate, or unless a contrary intent clearly appears.”¹⁹ In *Gardner v Wood*,²⁰ the issue presented was whether a civil cause of action for damages could be maintained against a premises owner for violation of the bottle club act, MCL 436.26c.

Gardner held that, when a statute is silent concerning whether a private remedy is available for a statutory violation, a court may infer a private cause of action “if it determines that the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision....”²¹ Utilizing a test derived from the Second Restatement of Torts, *Gardner* held that a cause of action could be created to redress a statutory violation where the purpose of the statute at issue was “found to be exclusively or in part *193“(a) to protect a class of persons which includes the one whose interest is invaded, and “(b) to protect the particular interest which is invaded, and “(c) to protect that interest against the kind of harm which has resulted, and “(d) to protect that interest against the particular hazard from which the harm results.”[²²] While the four-factor test focused exclusively on the purpose of the statute, *Gardner* further observed that the purpose of the statute alone was an insufficient basis for inferring a private right of action.

Rather, *Gardner* held that the “determination [to infer a private cause of action] should not only be consistent with legislative intent, but should further the purpose of the legislative enactment.”²³ *Gardner* held that a cause of action could not be maintained because it was inconsistent with the intent of the Legislature, indicating that the imposition of a private cause of action was “a matter for legislative resolution.”²⁴ Similarly, subsequent decisions of this Court have refused to impose a remedy for a statutory violation in the absence of evidence of legislative intent.²⁵ *194 In this case, we need not consider either the factors articulated in *Gardner* or the footnote in *Pompey* because neither case may be properly extended to allow a private cause of action for money damages to be implied against a governmental entity such as defendant.²⁶ Without “express legislative authorization,” a cause of action cannot be created “in contravention of the broad scope of governmental immunity....”²⁷ Here, there is no express authorization permitting a private cause of action against a public employer for violation of MCL 15.602(2), nor is there any evidence that the Legislature intended such a remedy.

Because the words of a statute provide the most reliable evidence of the Legislature’s intent, we look there to discern it,²⁸ and may not speculate regarding that intent beyond those words expressed in the statute.²⁹ A “public employer” is defined under MCL 15.601(a) as a political

subdivision of the state.³⁰ Political subdivisions such as defendant enjoy immunity from tort liability under the governmental tort liability act (GTLA), MCL 691.1401 et seq.³¹ Under the GTLA, the defendant is immune from tort liability “unless the Legislature has pulled back the veil of immunity and allowed suit by citizens against the government.”³² The GTLA permits a cause of action to be brought against a governmental agency in only six discrete areas, none of which is relevant here.³³ In addition, the Legislature has elsewhere created causes of action against political subdivisions of the state.³⁴ In fact, chapter 15 of the Michigan Compiled Laws is replete with instances where the Legislature has explicitly permitted actions for monetary damages against municipalities and their employees.³⁵ However, none of these exceptions can be interpreted to permit a suit for violation of the permitted residency requirement described in MCL 15.602(2).

Rather, the fact that the Legislature has explicitly permitted damage suits in other provisions of chapter 15 provides persuasive evidence that the Legislature did not intend to create a private cause of action for violation of this particular provision.

Moreover, plaintiffs claim that a private cause of action for monetary damages is the only mechanism by which the statute can be enforced is incorrect. Plaintiff could enforce the statute by seeking injunctive relief pursuant to MCR 3.310, or declaratory relief pursuant to MCR 2.605(A) (1).³⁶ A preliminary injunction may be granted under MCR 3.310(A) where plaintiff can make a particularized showing of irreparable harm that will occur before the merits of the claim are considered.³⁷ Moreover, an “actual controversy” exists for the purposes of a declaratory judgment where a plaintiff pleads and proves facts demonstrating an adverse interest necessitating a judgment to preserve the plaintiffs legal rights.³⁸ In this case, plaintiffs claim is that defendant’s residency requirement, made a condition of plaintiffs employment, was in violation of MCL 15.602(2).

Such a ¹⁹⁷claim would constitute an “actual controversy” for the purposes of an action for a declaratory judgment. Plaintiff claims that these remedies are “an illusion,” because enforcing the statute by seeking declaratory or injunctive relief would “likely be costly.” However, plaintiff cites no authority, and we are aware of none, that would permit the creation of a cause of action for monetary damages in contravention of governmental immunity simply because other available remedies are less economically advantageous to plaintiff.

It is not within the authority of the judiciary “to redetermine the Legislature’s choice or to independently assess what would be most fair or just or best public policy.”³⁹ Rather, the relief that plaintiff seeks must be provided by the Legislature. IV CONCLUSION We hold that the 20-mile distance permitted in MCL 15.602(2) is to be measured in radial miles between the nearest boundary of the public employer and the employee’s place of residence.

In this case, the residency requirement demanded by defendant contravenes MCL 15.602(2). However, we also hold that plaintiff may not maintain a private cause of action for money damages for violation of the statute because nothing in the statute creates such a cause of action.

We affirm in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion. Taylor, C.J., and Corrigan and Markman, JJ., concurred with Young, J. As used throughout this opinion, the term “road miles” refers to measuring a distance by the shortest route of public travel.

In contrast, the term “radial miles” refers to measuring a distance in a straight line between two points. This residency requirement, included in the collective bargaining agreement between defendant and the Police Officers Labor Council, is consistent with Traverse City Executive Order No. 311. These examinations were scheduled for early April 2004, approximately three weeks after the conditioned offer of employment was made.

However, defendant cancelled the testing after rescinding the employment offer. *Lash v Traverse City*, 271 Mich App 207; 720 NW2d 760 (2006). 477 Mich 920 (2006). *Jenkins v Patel*, 471 Mich 158, 162; 684 NW2d 346 (2004). *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999). *Tryc v Michigan Veterans’ Facility*, 451 Mich 129; 545 NW2d 642 (1996). *Sotelo v Grant Twp*, 470 Mich 95; 680 NW2d 381 (2004).

Koontz v Ameritech Services, Inc, 466 Mich 304; 645 NW2d 34 (2002). Random House Webster’s College Dictionary (1996), p 859. As we have noted in previous opinions, a statutory term is not rendered ambiguous merely because resort to a dictionary reveals more than one definition. *Koontz v supra*; *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006).

However, in this case the term “miles” has only one definition, which remains constant at 5,280 feet whether the distance is driven, walked, or flown. See, for example, *Kroger Co v Liquor Control Comm*, 366 Mich 481; 115 NW2d 377 (1962). There, the Court construed a now repealed statute, MCL 436.17a, that prohibited the issuance of a retail liquor license within 500 feet of a church or school.

The statute specifically indicated that the 500-foot distance “shall be measured along the center line of the street” from the nearest part of the church or school building to the nearest part of the location seeking the liquor license. *Kroger, supra* at 484. *Helder v Sruba*, 462 Mich 92; 611 NW2d 309 (2000); *Robertson v Daimler Chrysler Corp*, 465 Mich 732; 641 NW2d 567 (2002).

See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 729; 614 NW2d 607 (2000); *Detroit Trust Co v Granger*, 278 Mich 152, 162; 270 NW 239 (1936); *Burke v Chief of Police of Newton*, 374 Mass 450; 373 NE2d 949 (1978).

In her partially dissenting opinion, Justice KELLY opines that our analysis of the measurement of distance under MCL 15.602(2) is “only dictum,” although she agrees with it. We find the logic of her contention hard to follow. Plaintiff seeks damages for defendant’s refusal to hire him.

Therefore, before determining whether plaintiff may maintain a private cause of action to remedy a violation of the statute, it is imperative to first determine whether a violation exists, thus requiring an analysis of MCL 15.602(2).

Moreover, while we ultimately conclude that plaintiff may not maintain a private cause of action for money damages, plaintiff is free to seek the remedies available to him for defendant’s violation of MCL 15.602(2). *Lash*, supra at 213 (opinion by Neff, J.). 385 Mich 537, 553 n 14; 189 NW2d 243 (1971). *Id.* (citation omitted).

We need not address the dictum in the Pompey footnote that some quantum of additional remedy is permitted where a statutory remedy is “plainly inadequate.” We do note that this principle, which has never since been cited in any majority opinion of this Court, appears inconsistent with subsequent caselaw. See *Grand Traverse Co v Michigan*, 450 Mich 457; 538 NW2d 1 (1995) (available statutory remedy precluded a private cause of action without resort to assessing its adequacy); *White v Chrysler Corp*, 421 Mich 192, 206; 364 NW2d 619 (1984) (The Court refused to permit a tort remedy for violations of the Michigan Occupational Safety and Health Act, MCL 408.1001 et seq., despite acknowledging that the statutory remedy was inadequate because it resulted “in the undercompensation of many seriously injured workers.”).

429 Mich 290; 414 NW2d 706 (1987). *Gardner*, supra at 301 n 5, quoting 4 Restatement Torts, 2d, § 874A, p 301. *Id.* at 302, quoting *Longstreth v Gensel*, 423 Mich 675, 692-693; 377 NW2d 804 (1985), quoting 2 Restatement Torts, 2d, § 286, p 25. *Id.* at 304 (emphasis added). *Id.* at 307. *Gardner* also cited with approval *Cart v Ash*, 422 US 66; 95 S Ct 2080; 45 L Ed 2d 26 (1975), in which the United States Supreme Court delineated several factors to be considered in determining whether a private remedy is available for a statutory violation.

However, as we noted in *Office Planning Group, Inc v Baraga-Houghton-Keweenaw Child Dev Bd*, 472 Mich 479, 498; 697 NW2d 871 (2005), post-Cort cases have retreated from consideration of all the enumerated factors, and now focus exclusively on evidence of legislative intent “ ‘to create, either expressly or by implication, a private cause of action.’ ” (Citation omitted.)

See *People v Anstey*, 476 Mich 436, 445 n 7; 719 NW2d 579 (2006) (“Because the Legislature did not provide a remedy in the statute, we may not create a remedy that only the Legislature has the power to *194create.”); *Office Planning Group*, supra; *Grand Traverse Co*, supra at 465 (“[W]e cannot find a principled basis for continuation of this cause of action. Reviewing the statute in its entirety, we hold that a plain reading of the statute simply does not support this cause of action or the relief requested.”).

Justice Kelly's partial dissent claims that any discussion regarding whether a private cause of action may be implied for a violation of MCL 15.602 is dictum because governmental immunity bars plaintiffs action. However, as MCL 15.602 by its own terms only applies to public employers, it is difficult to envision how these two issues are severable. Rather, governmental immunity is the reason that neither Gardner nor Pompey may be extended to permit the judicial creation of a claim for money damages against a governmental entity.

Mack v Detroit, 467 Mich 186, 196; 649 NW2d 47 (2002). Justice Kelly acknowledges the import and precedential effect of Mack, but simply disagrees with that decision. Sun Valley Foods Co v Ward, 460 Mich 230; 596 NW2d 119 (1999). Omne Financial, Inc v Shacks, Inc, 460 Mich 305; 596 NW2d 591 (1999). Specifically, MCL 15.601(a) defines "public employer" as a "county, township, village, city, authority, school district, or other political subdivision of this state and includes any entity jointly created by 2 or more public employers." See MCL 691.1401(d), defining "governmental agency" as "the state or a political subdivision." Mack, supra at 195.

The six statutory exceptions to governmental immunity are the highway exception, MCL 691.1402; the motor vehicle exception, MCL 691.1405; the public building exception, MCL 691.1406; the governmental hospital exception, MCL 691.1407(4); the proprietary function exception, MCL 691.1413; and the sewage system event exception, MCL 691.1417. See the Civil Rights Act, MCL 37.2103(g) and MCL 37.2202(l)(a); as well as the Persons with Disabilities Civil Rights Act, MCL 37.1103(g), MCL 37.1201(b), and MCL 37.1202.

See the Freedom of Information Act, MCL 15.232(d)(iii) and MCL 15.240(7) (permitting actual or compensatory damages as well as punitive damages for refusing or delaying disclosure of a public record under the act); the Open Meetings Act, MCL 15.273 (permitting the recovery of up to \$500 in damages against a public official for intentional violation of the act); the standards of conduct, MCL 15.342c (permitting a civil action for actual damages for violation of MCL 15.342b); and the Whistleblowers' Protection Act, MCL 15.361(b) and MCL 15.363 (permitting a civil action for actual damages for violation of MCL 15.362).

MCR 2.605(A)(1) provides the following remedy: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." Michigan Coalition of State Employee Unions v Civil Service Comm, 465 Mich 212, 225 n 11; 634 NW2d 692 (2001).

In addition to requiring that a moving party demonstrate irreparable harm in the absence of injunctive relief, other factors should be considered by the trial court: "(1) harm to the public interest if such an injunction is issued; (2) whether harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, and (3) the strength of the moving party's

showing that it is likely to prevail on the merits.” Id. Updegraff v Attorney General, 298 Mich 48; 298 NW 400 (1941); Finlayson v West Bloomfield Twp, 320 Mich 350; 31 NW2d 80 (1948).

Hanson v Mecosta Co Rd Comm’rs, 465 Mich 492, 504; 638 NW2d 396 (2002).

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