

MICHIGAN SUPREME COURT

Jerome Plunkett, as Personal Representative of the Estate of Holly Marie Plunkett v. Department of Transportation

Plunkett v. Dep't of Transp. · No. SC: 140193; COA: 284320; Ingham CC: 05-000166-MD · Decided March 10, 2011

SUMMARY

The Michigan Supreme Court denied leave to appeal in a wrongful-death action alleging that roadway rutting and defective repairs caused rainwater to accumulate and led to a fatal hydroplaning accident. A concurrence supported the denial under the natural-accumulation doctrine, while a dissent argued that the alleged roadway defects and unnatural water accumulation could support liability under the highway exception to governmental immunity.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Robert P. Young, Jr., Chief Justice; Michael F. Cavanagh; Marilyn Kelly; Stephen J. Markman; Diane M. Hathaway; Mary Beth Kelly; Brian K. Zahra
JURISDICTION	Michigan
DECIDED	March 10, 2011
DOCKET	SC: 140193; COA: 284320; Ingham CC: 05-000166-MD
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Plaintiff sought leave to appeal the Michigan Court of Appeals judgment reversing the trial court's denial of the Department of Transportation's motion for summary disposition based on governmental immunity. The Michigan Supreme Court denied leave to appeal.
STANDARD OF REVIEW	De novo review applies to a trial court's ruling on a motion for summary disposition and to questions of statutory interpretation. For a motion under MCR 2.116(C)(7), the court considers documentary evidence and accepts complaint allegations as factually accurate unless contradicted by the moving party's documentation.
PRECEDENTIAL VALUE	Nonprecedential order denying leave to appeal; separate concurrence and dissent do not establish a majority merits holding.

PARTIES

Jerome Plunkett, as Personal Representative of the Estate of Holly Marie Plunkett v. Department of Transportation

TOPICS

appellate procedure

municipal liability

statutory interpretation

negligence

proximate cause

PRACTICE AREAS

governmental immunity

highway exception

wrongful death

summary disposition

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Michigan Supreme Court should grant leave to appeal from the Court of Appeals judgment granting MDOT summary disposition on governmental-immunity grounds.
2. Whether alleged rutting and defective repairs that caused rainwater to accumulate on a highway could constitute a highway defect and a proximate cause of injury under MCL 691.1402(1), rather than merely causing a nonactionable natural accumulation.
3. Whether plaintiff's allegations concerned an actionable failure to maintain or repair the highway or an excluded design defect.

HOLDINGS

1. The Michigan Supreme Court denied the application for leave to appeal because it was not persuaded that the questions presented should be reviewed by the Court.
2. Justice Markman's concurrence concluded that the roadbed ruts were not a proximate cause of the accident because the evidence showed that they caused the accumulation of rainwater, while the water itself caused the hydroplaning; the concurrence analogized the situation to *Haliw* and *Hopson*.

KEY QUOTATIONS

"On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court." (order at 1)

"Because the roadbed ruts only caused the accumulation of the water, they were not a proximate cause of the accident." (concurrence at 2)

"When repairs are defectively performed such that they eliminate design features and prevent a road from naturally draining, an ensuing accumulation of water in admittedly foreseeable ruts can hardly be deemed 'natural.'" (dissent at 10)

FACTUAL BACKGROUND

Holly Plunkett was driving southbound on US-127 in Clare County during heavy rain when her vehicle hydroplaned, struck a tree, and caused fatal injuries. The estate alleged that traffic wear and MDOT's microsurfacing repairs caused rutting and eliminated the road's original super-elevation and cross-slope,

preventing water from draining and causing an allegedly unnatural accumulation of water. MDOT had scheduled resurfacing to correct defects resulting from excessive wear, and plaintiff presented evidence that water accumulation on the highway posed a safety concern.

PROCEDURAL HISTORY

Plaintiff filed a wrongful-death action alleging that defective highway repairs, rutting, and inadequate drainage caused rainwater to accumulate on US-127 and caused the decedent's vehicle to hydroplane. The trial court denied the Department's motion for summary disposition under MCR 2.116(C)(7). The Court of Appeals reversed and granted summary disposition to the Department. The Michigan Supreme Court heard oral argument on the application for leave to appeal and then denied the application. Justice Markman concurred in the denial, while Justice Marilyn Kelly dissented and would have reversed and remanded.

DISPOSITION

writ_denied

CASES CITED

- Haliw v City of Sterling Heights, 464 Mich 297 (2001)
- Hopson v Detroit, 235 Mich 248 (1926)
- Stord v Transportation Dep't, 186 Mich App 693, 694 (1991)
- Newton v Worcester, 174 Mass 181 (1899)
- Plunkett v Dep't of Transportation, 286 Mich App 168 (2009)
- Shay v Aldrich, 487 Mich 648, 656 (2010)
- Patterson v Kleiman, 447 Mich 429, 434 n 6 (1994)
- Regents of the Univ of Michigan v Titan Ins Co, 487 Mich 289, 297 (2010)