

MICHIGAN SUPREME COURT

Thomas LaMeau, Personal Representative of Brian K. Zahra, the Estate of John M. Crnkovich, Deceased v. City of Royal Oak, Elden Danielson, Bryan Warju, Detroit Edison Company, and Gaglio PR Cement Corporation

LaMeau · No. SC: 141559-60; COA: 290059, 292006; Oakland CC: 07-083761-NO · Decided December 21, 2011

SUMMARY

The Michigan Supreme Court reversed the Court of Appeals and remanded for summary disposition in favor of the public defendants in a wrongful-death action arising from a utility wire embedded in a Royal Oak sidewalk. The majority adopted the reasoning of the Court of Appeals dissent, while Justice Marilyn Kelly argued that the sidewalk fell within the highway exception to governmental immunity and that factual questions remained regarding the municipality's duty and the individual defendants' gross negligence.

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
JURISDICTION	Michigan
DECIDED	December 21, 2011
DOCKET	SC: 141559-60; COA: 290059, 292006; Oakland CC: 07-083761-NO
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Michigan Supreme Court reconsidered defendants' application for leave to appeal after hearing oral argument and, in lieu of granting leave, reversed the Court of Appeals judgment and remanded for entry of summary disposition in favor of the public defendants.
STANDARD OF REVIEW	Summary disposition is reviewed by considering the facts in the light most favorable to the nonmoving party. The dissent stated that whether the individual defendants' conduct was grossly negligent and whether it was the proximate cause of the injury presented factual questions for the jury.

PRECEDENTIAL VALUE	Published Michigan Supreme Court order; precedential value may be limited because the majority resolved the matter by adopting the Court of Appeals dissent without an independent opinion.
PARTIES	City of Royal Oak, Elden Danielson, Bryan Warju v. Thomas LaMeau, Personal Representative of Brian K. Zahra, the Estate of John M. Crnkovich, Deceased, Detroit Edison Company, Gaglio PR Cement Corporation

TOPICS

municipal liability statutory interpretation summary judgment standard of review appellate procedure

PRACTICE AREAS

torts municipal law governmental immunity civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the sidewalk qualified as a highway within Michigan's highway exception to governmental immunity despite the presence or intended use of barricades.
2. Whether the utility wire and anchor embedded in the sidewalk constituted a sidewalk defect rather than an excluded utility pole or appendage.
3. Whether the city was entitled to summary disposition under governmental-immunity provisions.
4. Whether city employees Elden Danielson and Bryan Warju were entitled to governmental immunity because their conduct could not constitute gross negligence or proximate cause as a matter of law.

HOLDINGS

1. The Michigan Supreme Court reversed the Court of Appeals judgment and remanded for entry of an order granting summary disposition to the public defendants, adopting the reasoning of the Court of Appeals dissent.
2. The dissent would have held that summary disposition was improper because a reasonable jury could find that Danielson and Warju acted with gross negligence; this reasoning was not the majority holding because the majority reversed and adopted the contrary Court of Appeals dissent.

KEY QUOTATIONS

“In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals, for the reasons stated in the Court of Appeals dissenting opinion, and we REMAND this case to the Oakland Circuit Court for entry of an order granting summary disposition to the public defendants.” (order at p. 1)

“However, the question of whether those defendants were grossly negligent is a question of fact for the jury.” (dissent at p. 7)

FACTUAL BACKGROUND

A Royal Oak sidewalk was constructed around a Detroit Edison utility anchor and wire despite warnings that the wire posed a danger to pedestrians and bicyclists. The city and its employees directed the contractor to pave near the wire and attempted to barricade the area, but the barricades were repeatedly removed or displaced. After two earlier bicycle accidents at the location, John Crnkovich, who had consumed alcohol and marijuana, collided with the wire while riding a motorized scooter on May 24, 2006, suffered a fatal spinal-cord injury, and died.

PROCEDURAL HISTORY

Plaintiff brought negligence, nuisance, and gross-negligence claims arising from a fatal collision with a utility wire embedded in a Royal Oak sidewalk. The circuit court dismissed the nuisance claims but denied the public defendants' motions for summary disposition on governmental-immunity, gross-negligence, and proximate-cause grounds. The Court of Appeals affirmed in a split decision. The Michigan Supreme Court reversed by adopting the reasoning of the Court of Appeals dissent and remanded for summary disposition for the public defendants; Justice Kelly dissented.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Oakland Circuit Court for entry of an order granting summary disposition to the public defendants.

CASES CITED

- LaMeau v Royal Oak, 289 Mich App 153 (2010)
- LaMeau v Royal Oak, 488 Mich 1052 (2011)
- Briggs Tax Serv, LLC v Detroit Pub Sch, 485 Mich 69, 76 (2010)
- Dressel v Ameribank, 468 Mich 557, 561 (2003)
- Maiden v Rozwood, 461 Mich 109, 122-123 (1999)
- Nawrocki v Macomb Co Rd Comm, 463 Mich 143 (2000)
- Buckner Estate v City of Lansing, 480 Mich 1243 (2008)
- Whitmore v Charlevoix Co Rd Comm, unpublished Michigan Supreme Court order, Docket No. 142106, decided December 21, 2011
- Findley v DaimlerChrysler, unpublished Michigan Supreme Court order, Docket No. 141858, decided December 9, 2011
- Estate of Jilek v Stockson, unpublished Michigan Supreme Court order, Docket No. 141727, decided December 21, 2011
- Jones v Detroit Med Ctr, unpublished Michigan Supreme Court order, Docket Nos. 141624, 141629, decided December 21, 2011
- McCue v O-N Minerals, unpublished Michigan Supreme Court order, Docket No. 142287, decided December 16, 2011

