

MICHIGAN COURT OF APPEALS

Citizens Insurance Company v. Bloomfield Township, 209 Mich. App. 484

532 N.W.2d 183 (1994) · No. 156133 · Decided March 22, 1995

SUMMARY

The Michigan Court of Appeals reversed summary disposition for Bloomfield Township in a subrogation action arising from water damage caused by a fire hydrant failure. The court held that factual disputes existed concerning whether the trespass-nuisance exception to governmental immunity applied, particularly because the township required, owned, operated, and maintained the hydrant. The case was remanded for further proceedings.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	Per curiam; Hood, P.J.; Jansen, J.; A.T. Davis, Jr., J.
JURISDICTION	Michigan
DECIDED	March 22, 1995
DOCKET	156133
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed as of right from an Oakland Circuit Court order granting Bloomfield Township's motion for summary disposition on governmental-immunity grounds.
STANDARD OF REVIEW	Summary disposition is reviewed de novo. When governmental immunity is the basis for summary disposition, the court considers all documentary evidence, accepts well-pleaded allegations as true, and construes them in favor of the nonmoving party. Summary disposition under MCR 2.116(C)(10) is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Michigan Court of Appeals opinion; precedential under applicable Michigan law.
PARTIES	Citizens Insurance Company v. Bloomfield Township

TOPICS

municipal liability

subrogation

summary judgment

standard of review

appellate procedure

PRACTICE AREAS

municipal liability

insurance subrogation

governmental immunity

summary disposition

appellate procedure

QUESTIONS PRESENTED

1. Whether a genuine issue of material fact existed concerning the causation or governmental control elements of the trespass-nuisance exception to governmental immunity.
2. Whether Bloomfield Township was entitled to summary disposition because governmental immunity barred Citizens Insurance's subrogation claim.

HOLDINGS

1. The trespass-nuisance exception applies when a direct trespass upon, or interference with the use or enjoyment of, land results from a physical intrusion caused by or under the control of a governmental entity and causes personal or property damage.
2. Summary disposition was improper because the evidence created a genuine factual dispute about whether Bloomfield Township's ownership and control of the hydrant satisfied the causation-or-control requirement of the trespass-nuisance exception.

KEY QUOTATIONS

“A direct trespass upon, or the interference with the use or enjoyment of, land that results from a physical intrusion caused by, or under the control of, a governmental entity constitutes a compensable injury.” (487)

“These elements are summarized as condition (nuisance or trespass), cause (physical intrusion), and causation or control (by government).” (487)

“In the present case, defendant owned and operated the fire hydrant and required its use in the development. Thus, defendant owned and controlled the fire hydrant from which the nuisance arose.” (489)

FACTUAL BACKGROUND

Hillside Furniture suffered \$342,844.11 in water damage when a sprinkler-system pipe burst after an unknown vehicle struck a nearby fire hydrant, causing a pressure surge. Citizens Insurance paid the loss and sued as Hillside Furniture's subrogee. Bloomfield Township had required one of two specified hydrants, inspected and approved the installation, later took ownership of the hydrant, and operated and maintained it, although the hydrant was located on private property.

PROCEDURAL HISTORY

Citizens Insurance, as subrogee of Hillside Furniture, sued Bloomfield Township and two private entities after a fire hydrant was struck and a resulting water surge damaged Hillside Furniture's property. The trial court held that governmental immunity barred the claim and granted the township summary disposition under MCR 2.116(C)(7) and (10). The Michigan Court of Appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings, including resolution by the trier of fact of whether the hydrant was unreasonably defective and whether the township's ownership and control establish liability under the trespass-nuisance exception. Jurisdiction was not retained.

CASES CITED

- Michigan Mutual Ins. Co. v. Dowell, 204 Mich. App. 81, 86, 514 N.W.2d 185 (1994)
- Summers v. Detroit, 206 Mich. App. 46, 48, 520 N.W.2d 356 (1994)
- Peterman v. Dep't of Natural Resources, 446 Mich. 177, 204-206, 521 N.W.2d 499 (1994)
- Li v. Feldt (After Remand), 434 Mich. 584, 594, 456 N.W.2d 55 (1990)
- Hadfield v. Oakland County Drain Commissioner, 430 Mich. 139, 422 N.W.2d 205 (1988)
- Kuriakuz v. West Bloomfield Township, 196 Mich. App. 175, 177, 492 N.W.2d 757 (1992)
- McSwain v. Redford Township, 173 Mich. App. 492, 434 N.W.2d 171 (1988)
- Continental Paper & Supply Co., Inc. v. Detroit, 205 Mich. App. 404, 407-408, 521 N.W.2d 844 (1994)

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