

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)

OPINION

PER CURIAM.

209 Mich. App. 484 (1994) 532 N.W.2d 183 CITIZENS INSURANCE COMPANY v. BLOOMFIELD TOWNSHIP Docket No. 156133. Michigan Court of Appeals. Submitted November 16, 1994, at Detroit. Decided December 1, 1994. Approved for publication March 22, 1995, at 9:05 A.M. Morrison, Mahoney & Miller (by Jeffrey R. Learned), for the plaintiff. Kohl, Secrest, Wardle, Lynch, Clark & Hampton (by William P. Hampton and Lanie Anderson), for Bloomfield Township.

Before: HOOD, P.J., and JANSEN and A.T. DAVIS, JR.,[*] JJ. PER CURIAM. Plaintiff appeals as of right from an order of the Oakland Circuit Court granting defendant Bloomfield Township's (hereafter, defendant will be used to refer solely to Bloomfield Township) motion for summary disposition.

We reverse. On May 2, 1989, Hillside Furniture, Inc., suffered water damage when a sprinkler system pipe burst because of a pressure surge. The pressure surge resulted when an unknown

vehicle struck a fire hydrant located near the shopping center area where Hillside Furniture was located. Plaintiff Citizens Insurance Company was Hillside Furniture's property insurer and it paid \$342,844.11 because of the property damage.

Plaintiff, as the subrogee of Hillside Furniture's rights, brought this action against defendant, the East Jordan Iron Works Company, and Tristar Fire Protection, Inc. East Jordan Iron Works manufactured the fire hydrant and Tristar Fire Protection installed the sprinkler system. *486 Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that it was not liable under the doctrine of governmental immunity.

Plaintiff contended that the trespass-nuisance exception to governmental immunity applied and that defendant was, therefore, liable. The trial court ruled that the trespass-nuisance exception was not designed for this situation, that governmental immunity applied, and that defendant was entitled to summary disposition.

We review the trial court's grant of summary disposition de novo because we must review the record to determine if defendant was entitled to judgment as a matter of law. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). When reviewing a grant of summary disposition based on a finding that the claim is barred by governmental immunity, all documentary evidence submitted by the parties is to be considered.

All well-pleaded allegations are accepted as true and construed in favor of the nonmoving party. *Summers v Detroit*, 206 Mich App 46, 48; 520 NW2d 356 (1994). MCR 2.116(C)(10) permits summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.

Thus, we must determine whether there is a material factual dispute regarding whether the trespass-nuisance exception to governmental immunity applies in this case. The trespass-nuisance exception to governmental immunity has clearly been recognized by our Supreme Court. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 204-205; 521 NW2d 499 (1994); *Li v Feldt (After Remand)*, 434 Mich 584, 594; 456 NW2d 55 (1990); *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139; 422 NW2d 205 (1988).

A direct trespass upon, or the interference *487 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. This exception is defined as trespass or interference with the use or enjoyment of land caused by the government or its agents and resulting in personal or property damage.

These elements are summarized as condition (nuisance or trespass), cause (physical intrusion), and causation or control (by government). *Peterman*, supra, p 205. Plaintiff's claim is that defendant required the installation of East Jordan Iron Works fire hydrants in the parking lot outside Hillside

Furniture's business. Plaintiff's theory of liability is, therefore, premised on defendant's requirement and approval of the East Jordan fire hydrants at the shopping center area.

Plaintiff claims that by effectively deciding for the developers which fire hydrant to use, defendant enabled the flood to occur. Plaintiff alleges, in turn, that East Jordan negligently designed and manufactured the fire hydrant.

First, it is undisputed that defendant was involved in the operation of a governmental function. The operation of a municipal water supply system is a governmental function and the operation of the fire hydrants was under the control of the township's water and sewer department. MCL 41.331 et seq.; MSA 5.2599(1) et seq.; MCL 41.411 et seq.; MSA 5.2411 et seq.

Thus, plaintiff must affirmatively establish that the trespass-nuisance exception applies. There can be little doubt that the first two elements of trespass-nuisance have been established by plaintiff. Hillside Furniture was flooded with water because of the sprinkler system pipe that burst when the water surged through the *488 pipes when the fire hydrant was run over.

Peterman, *supra*, p 206. At issue is whether there is sufficient causation or control to impose liability on defendant. Liability for damage caused by a nuisance may be imposed where the defendant creates the nuisance, owns or controls the property from which the nuisance arose, or employed another that it knows is likely to create a nuisance. *Kuriakuz v West Bloomfield Twp*, 196 Mich App 175, 177; 492 NW2d 757 (1992).

East Jordan Iron Works designed and manufactured the fire hydrant. Gordon Sel-Way, Inc., purchased and installed the hydrant. Defendant required that one of two fire hydrants be used, either one manufactured by East Jordan or one manufactured by Mueller. Defendant inspected the installation of the hydrant. Defendant also reviewed and approved the plan for the shopping center to ensure that the plan met the township's ordinances and specifications.

Once the hydrant was installed, it was deeded to defendant and defendant then operated and maintained the hydrant. The hydrant that was struck was located on private property not under defendant's control. We find that there is a sufficient factual dispute that must be resolved by the trier of fact. It is plaintiff's contention that the defective design and manufacture of the fire hydrant caused the valve stem to become separated at ground level thus causing a water power surge and the power surge, in turn, caused the sprinkler pipes to burst.

Defendant owned and maintained the fire hydrant, and, therefore, had control of the object that caused the trespass-nuisance. The cases relied on by defendant are easily distinguishable. In *McSwain v Redford Twp*, 173 Mich App 492; 434 NW2d 171 (1988), privately *489 owned septic systems failed and caused the trespass-nuisance.

The defendant township issued the building or occupancy permits, but did not own, maintain, operate, or control the septic systems in any manner. In *Kuriakuz*, *supra*, a privately owned storm water drainage system caused flooding and damage to the plaintiffs' property.

The defendant township did not have an affirmative duty to construct a storm drainage system and the defendant did not exercise any control over the system. The township's approval of the plan to build the condominium complex was not sufficient to establish causation or control.

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. See *Continental Paper & Supply Co, Inc v Detroit*, 205 Mich App 404, 407-408; 521 NW2d 844 (1994). Whether the hydrant was actually unreasonably defective will be for the trier of fact to ascertain.

Reversed and remanded for further proceedings. Jurisdiction is not retained. NOTES [*] Circuit judge, sitting on the Court of Appeals by assignment.