

STATE OF MICHIGAN
COURT OF CLAIMS

SHERIECE BUCHANAN,

Plaintiff,

v

MICHIGAN DEPARTMENT OF
TRANSPORTATION,

Defendant.

OPINION AND ORDER

Case No. 24-000010-MD

Hon. Sima G. Patel

**OPINION AND ORDER DENYING DEFENDANT’S SUMMARY DISPOSITION
MOTION**

Defendant, Michigan Department of Transportation (MDOT), moves for summary disposition under MCR 2.116(C)(7) and (C)(8), arguing that the roadway defect that allegedly caused plaintiff, Sheriece Buchanan’s, injuries is located on a portion of the state highway not designed for vehicular travel. MDOT thus argues that the highway exception to the Governmental Tort Liability Act (GTLA), MCL 691.1402(1), does not apply.

Buchanan, on the other hand, asserts that there is a genuine issue of material fact whether the lane where the defect is located was used exclusively for parking or whether it had a dual purpose. Cf. *Pitts v Dearborn*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336530). The photographs of the roadway do not demonstrate as a matter of law that the lane’s current design, evidenced by “paint delineating the individual parallel-parking spaces,” sets this portion of the roadway apart exclusively for parking. See *Yono v Dep’t*

of Transp, 499 Mich 636, 653; 885 NW2d 445 (2016). For this reason, and because discovery has yet to commence, summary disposition is premature. See *Townsend v Chase Manhattan Mtg Corp*, 254 Mich App 133, 140-141; 657 NW2d 741 (2002). MDOT's motion for summary disposition is DENIED.

I. BACKGROUND

Buchanan tripped and fell on the roadway and/or curb in front of 2669 Gratiot in the city of Detroit on May 18, 2023. Gratiot is also known as M-3 and is under MDOT's jurisdiction. There were two or three footprints indented into the cement on the road, one of which was allegedly more than two inches deep, and Buchanan claims these indents are defects that caused her injury.¹

MDOT relies on the affidavit of Margaret Ceifetz, who worked as the Traffic Safety Coordinator (TSC) for the city of Detroit at the time of Buchanan's accident. Ceifetz testified that the imprints were located in a parking lane, which was "too narrow to be traveled in safely at the posted speed limit" and, therefore, not a lane designed for vehicular travel. Pictures included with Ceifetz's affidavit evidence a sign identifying the area as designated for metered parking (Zone 206), but there are no lanes or markings painted on the roadway itself that designate it as designed for parallel parking. Ceifetz described the roadway at the location where the defect was located, as a street composed of "six 11-foot travel lanes, a center-turn lane, and two 7-foot parallel-parking lanes outside the travel lanes."

¹ MDOT may disagree that the depth of either indent exceeds two inches; however, for purposes of the motion, this allegation is accepted as true.

II. ANALYSIS

MDOT seeks summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(8). Summary disposition is warranted under MCR 2.116(C)(7) when “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of . . . immunity granted by law.” MCR 2.116(C)(7). When evaluating a motion under this court rule, this Court reviews “affidavits, pleadings, and other documentary evidence presented by the parties,” accepting “plaintiff’s well-pleaded allegations as true, except those contradicted by documentary evidence,” to determine whether immunity applies as a matter of law. *McLean v Dearborn*, 302 Mich App 68, 72-73; 836 NW2d 916 (2013). Such documentary evidence must be viewed in the light most favorable to Buchanan, as the nonmoving party. *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001). “If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate.” *Dextrom v Wexford Co*, 287 Mich App 406, 429; 789 NW2d 211 (2010).

MCR 2.116(C)(8) authorizes summary disposition when the “opposing party has failed to state a claim upon which relief can be granted.” MCR 2.116(C)(8). A motion under this court rule “tests the *legal sufficiency* of a claim based on the factual allegations in the complaint.” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019). This Court’s role is to “accept as true all factual allegations contained in the complaint.” *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013). “A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are ‘so clearly unenforceable . . . that no factual development could

possibly justify recovery.” *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999) (quotation marks omitted.).

The Court finds summary disposition premature. While it is true that the GTLA provides governmental agencies, such as the MDOT, with a “broad[] shield[] from tort liability,” *Fairley v Dep’t of Corrections*, 497 Mich 290, 297-298; 871 NW2d 129 (2015), it is equally true that certain exceptions have been codified in Michigan law. The parties’ briefs present a question of fact whether the highway exception applies here. The highway exception to the GTLA codified in Michigan law as follows:

Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. . . . Except as provided in section 2a, the duty of a governmental agency to repair and maintain highways, and the liability for the duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. . . . [MCL 600.1402(1).]

This exception does not apply to injuries that occur on a portion of the highway designed exclusively for parallel parking. *Yono*, 499 Mich at 641. However, this does “not suggest that the highway exception requires that the area in question be designed *exclusively* for vehicular travel. For example, . . . a street in a residential neighborhood, with no designated parking lane, might be designed for both curbside parking and vehicular travel.” *Id.* at 656-57. There is a question of fact whether the lane in which Buchanan’s injury allegedly occurred had a dual purpose. Photographs of the roadway reflect signage near the location of the defect that designate the area as parking, but no lanes appear on the roadway as was present in *Yono*. The record does not support MDOT’s position that no factual development could support plaintiff’s claims.

III. CONCLUSION

Accordingly, for the reasons set forth in this Opinion and Order, IT IS ORDERED THAT MDOT's motion for summary disposition is DENIED without prejudice to raise again after discovery is complete.

IT IS SO ORDERED.

This is not a final order and does not dispose of the case.

Date: October 7, 2024



Hon. Sima G. Patel
Judge, Court of Claims

