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STATE OF MICHIGAN

COURT OF APPEALS

VIRGINIA KRUCZEK,

Plaintiff-Appellant,

v

FRASER PUBLIC SCHOOLS,

Defendant-Appellee.

UNPUBLISHED
September 04, 2026
11:35 AM

No. 375908
Macomb Circuit Court
LC No. 2023-003463-NO

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

PER CURIAM.

Plaintiff, Virginia Kruczek, appeals as of right the trial court's order granting the motion for summary disposition filed by defendant, Fraser Public Schools. The trial court agreed with defendant that the condition of the public building that caused plaintiff's injury did not arise out of defendant's failure to repair and maintain the building, so plaintiff's claim did not fall within the bounds of the exception to governmental immunity in MCL 691.1406. We agree and affirm.

I. BACKGROUND

Plaintiff was injured while exiting through an emergency-exit door after voting in the gymnasium of an elementary school owned by defendant. Plaintiff was using a walker at the time, and she had been for a few years. Plaintiff went into the school through "Door 14," which she described as "a handicapped door," and she "voted in the gym." After voting, plaintiff tried to leave the way she came in, but someone allegedly insisted that plaintiff exit through "Door 15," which was an emergency exit.

Plaintiff accordingly went to Door 15, pushed it open with her hand to get the right wheel of her walker out, then used her walker to push the door open more, and when the left wheel of plaintiff's walker "went out," plaintiff "went flying." Below is a picture of the outside of Door 15 taken by plaintiff's expert witness, depicting the area where plaintiff fell:



Plaintiff explained that she fell because she "didn't know" there was a drop off outside the door, but she "realized that after" she fell. Plaintiff claimed that the cause of her fall was the drop off and the sloped sidewalk in the area outside the door. Plaintiff conceded, however, that there was nothing wrong with the area where she fell or the door.

Plaintiff's expert, Donald L. Pratt, averred in a report that the "cross slope" of the concrete landing below the door where plaintiff fell was "7%," which exceeded the permissible "2%." Pratt opined that this created a "hazardous" condition because "someone using this exit would assume that the landing would-be [sic] level or within the 2% Standard." Pratt further opined that "the major contributing factor to [plaintiff's] fall on November 3, 2020, was the step down from the gymnasium floor to a sloped and non-compliant landing," and that the "fall likely would have been prevented had the exterior landing been level." Pratt also stated in his report, "It is my opinion that the irregular sloped landing was not part of the original construction plan but rather created by the contractor who poured the concrete landing."

Plaintiff was injured as a result of her November 2020 fall, and her complaint sought to recover for her injuries. Plaintiff's complaint alleged that her claim fell within the public-building exception to governmental immunity in MCL 691.1406 because the drop off and sloped sidewalk where she fell constituted a defective or dangerous condition of a public building.

Following discovery, defendant moved for summary disposition under MCR 2.116(C)(7) and (10), arguing that plaintiff's claim did not fall within the exception to governmental immunity in MCL 691.1406 because plaintiff's injury was the result of "a design defect, i.e., the step down outside of Door 15." According to defendant, nothing was in a state of disrepair where plaintiff fell; her fall was instead caused by a characteristic inherent in Door 15's design, namely the unguarded drop off leading to a sloped perpendicular sidewalk.

In response, plaintiff argued that the "dangerous or defective condition" that injured plaintiff—which she identified as "a nonconforming 7% cross slope landing, substantially exceeding the [permissible] 2% slope"—was not a "design defect."

The trial court held a hearing on defendant's motion on May 22, 2025. After listening to the parties' arguments, the court delivered its ruling from the bench. The court differentiated between design defects and a failure to repair and maintain by explaining that, as it understood the terms, a design defect "would appear to consist of a dangerous condition inherent in the design itself, such as characteristics, functioning[,] and purpose," whereas "a failure to repair or maintain appears to consist of something called [sic: caused] by extrinsic circumstances such as malfunction, deterioration, instability, or a fixture that's improperly secured or otherwise improperly constructed." The court opined that plaintiff failed to explain "how the non-conforming seven percent cross slope happening could be anything but a dangerous condition inherent in the design itself," as this was "not a malfunction[,] deterioration[,] or instability, but rather this is the design itself." The court accordingly held that there was "no genuine issue of material fact that . . . the claimed defect is one of design and not a defective condition as alleged in plaintiff's complaint," so the court granted defendant's motion.

This appeal followed.

II. STANDARD OF REVIEW

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 506; 885 NW2d 861 (2016). Defendant moved for summary disposition under MCR 2.116(C)(7) and (10). A (C)(7) motion may be properly granted if a claim is barred by "immunity granted by law." MCR 2.116(C)(7). Courts reviewing a motion filed under (C)(7) "must accept all well pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). That other evidence can include affidavits, depositions, admissions, or other documentary evidence, and when such other evidence is submitted, "the court must consider [it] to determine whether there is a genuine issue of material fact." *Id*. at 429. "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." *Id*.

A (C)(10) motion, in contrast, "tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When considering a (C)(10) motion, a court must consider all of the evidence submitted—including affidavits, pleadings, depositions, admissions, and other evidence, see MCR 2.116(G)(5)—in the light most favorable to the party opposing the motion. *Maiden*, 461 Mich at 120. If "the proffered evidence fails to establish a genuine issue regarding any material fact," then whether the moving party is entitled to judgment becomes a question of law for the court to decide. *Id*.

III. ANALYSIS

Governmental agencies are "immune from tort liability" if "engaged in the exercise or discharge of a governmental function" unless an exception to that immunity applies. MCL 691.1407(1).[1] One such exception is the public-building exception in MCL 691.1406, which provides in relevant part:

> Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition.

The trial court held that plaintiff's claim did not fall within this exception to governmental immunity because plaintiff was alleging a design defect, and such claims are not cognizable under MCL 691.1406. Our Supreme Court first held that "design defect" claims are not cognizable under MCL 691.1406 in *Renny v Dep't of Transp*, 478 Mich 490; 734 NW2d 518 (2007). Before *Renny*, our Supreme Court held that design-defect claims *were* cognizable under MCL 691.1406. The theory for this rested on the simple notion that the government should not be able to construct a building with a dangerous or defective condition then " 'shield itself behind its legislative powers' " and claim that the dangerous or defective condition was planned. *Bush v Oscoda Area Sch*, 405 Mich 716, 730; 275 NW2d 268 (1979), quoting *Malloy v Twp of Walker*, 77 Mich 448, 462; 43 NW 1012 (1889). The rule was therefore that "[g]overnmental agencies are subject to liability for a dangerous or defective condition of a public building without regard to whether it arises out of a failure to repair and maintain," so "a building may be dangerous or defective because of improper design, faulty construction or the absence of safety devices." *Bush*, 405 Mich at 730.

In *Renny*, our Supreme Court held that *Bush* and the cases that followed it effectively ignored MCL 691.1406's first sentence, which had the effect of expanding the scope of the duty imposed by the statute beyond that contemplated by the statute's plain language. *Renny* explained:

[1] There is no dispute that defendant is a governmental agency as defined in MCL 691.1401(a) and (e) that was engaged in a governmental function as defined in MCL 691.1401(b), such that defendant was entitled to governmental immunity absent an exception.

> The first sentence of MCL 691.1406 states that "[g]overnmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public." This sentence unequivocally establishes the duty of a governmental agency to "repair and maintain" public buildings. Neither the term "repair" nor the term "maintain," which we construe according to their common usage, encompasses a duty to design or redesign the public building in a particular manner. "Design" is defined as "to conceive; invent; contrive." By contrast, "repair" means "to restore to sound condition after damage or injury." Similarly, "maintain" means "to keep up" or "to preserve." Central to the definitions of "repair" and "maintain" is the notion of restoring or returning something, in this case a public building, to a prior state or condition. "Design" refers to the initial conception of the building, rather than its restoration. "Design" and "repair and maintain," then, are unmistakably disparate concepts, and the Legislature's sole use of "repair and maintain" unambiguously indicates that it did not intend to include design defect claims within the scope of the public building exception.
>
> The second sentence of MCL 691.1406, which imposes liability on governmental agencies "for bodily injury and property damage resulting from a dangerous or defective condition of a public building," does not expand the duty beyond the repair and maintenance of a public building. The phrase imposes liability where the "dangerous or defective condition of a public building" arises out of the governmental agency's failure to repair and maintain that building. It is not suggestive of an additional duty beyond repair and maintenance. There is no reason to suspect that the Legislature intended to impose a duty to prevent "dangerous or defective condition[s]" in public buildings in a manner wholly unrelated to the obligation clearly stated in the first sentence. [*Renny*, 478 Mich at 500-501 (citations and footnotes omitted).]

Later, in *Tellin v Forsyth Twp*, 291 Mich App 692; 806 NW2d 359 (2011), this Court opined that *Renny* merely announced the distinction between "design" and "repair and maintenance" without explaining "where the line between the two concepts should be drawn." *Id*. at 703. Attempting to refine the two concepts, the *Tellin* Court ruled that a design defect "consist[s] of a dangerous condition inherent in the design itself, such as its characteristics, functioning, and purpose," whereas "a failure to repair or maintain appears to consist of something caused by extrinsic circumstances, such as a malfunction, deterioration, instability, or a fixture that is improperly secured or otherwise improperly constructed or installed." *Id*. at 705-706.

Returning to the instant case, we hold that the trial court correctly concluded that the condition that caused plaintiff's injury did not arise out of defendant's failure to repair and maintain a public building. Plaintiff claims that the condition that caused her injury was the drop off and sloped landing outside of Door 15. As the *Renny* Court explained, "Central to the definitions of 'repair' and 'maintain' is the notion of restoring or returning something, in this case a public building, to a prior state or condition." *Renny*, 478 Mich at 501. Plaintiff here is not alleging that defendant needed to restore or return the area outside of Door 15 to a different state or condition. Nor is she alleging that the cause of her fall was some type of "malfunction, deterioration, [or] instability" in the area where she fell. *Tellin*, 291 Mich App at 706. She is

instead alleging that the inherent characteristics of that area—the drop off and sloped landing—is what caused her injury, which is a design defect. See *id*. at 705. The trial court therefore did not err when it characterized plaintiff's injury as resulting from a design defect rather than a failure to repair or maintain the building. Stated another way, the trial court correctly held that plaintiff's injury did not arise out of defendant's failure to repair and maintain a public building, so her claim did not fall within the bounds of the exception to governmental immunity in MCL 691.1406.

Arguing against this result, plaintiff begins with "the second sentence of [MCL 691.1406]," emphasizing that a jury could conclude that the drop off and sloped landing where plaintiff fell was a "dangerous or defective condition." That may be true, but it is not the determinative inquiry. As *Renny* explained, the first sentence of MCL 691.1406 provides that a governmental agency owes a duty to repair and maintain public buildings under its control, and the second sentence of the statute "does not expand the duty beyond the repair and maintenance of a public building" to include "a duty to prevent 'dangerous or defective condition[s]' in public buildings . . . ." *Renny*, 478 Mich at 501. Whether plaintiff was injured by a dangerous or defective condition is only relevant if the existence of that condition was due to defendant's breach of its duty to repair and maintain its public building. See *id*. ("The phrase imposes liability where the 'dangerous or defective condition of a public building' arises out of the governmental agency's failure to repair and maintain that building.").

Plaintiff also contends that there is a question of fact "whether the exit was intentionally designed" in the condition that it was in when plaintiff fell. In support of this argument, plaintiff refers to the report of her expert, Pratt, wherein Pratt stated, "It is my opinion that the irregular sloped landing was not part of the original construction plan but rather created by the contractor who poured the concrete landing." As defendant notes on appeal, however, Pratt's opinion on this point is rank speculation, which cannot create a question of fact. *Estate of Trueblood v PEG Apartments, LLC*, 327 Mich App 275, 289; 933 NW2d 732 (2019).

That aside, the pertinent inquiry is not whether the area where plaintiff fell was "intentionally designed" to be in the condition that it was in, but whether the condition that caused plaintiff's injury was the result of defendant's failure to repair and maintain.[2] Relevant to that inquiry, it is uncontested that the area where plaintiff fell was originally constructed with a drop

[2] MCL 691.1406 does not use the word "design"; the *Renny* Court used that term because prior precedent from our Supreme Court had held that design-defect claims were cognizable under MCL 691.1406. To explain why that was error, the *Renny* Court contrasted the term "design" with the language that MCL 691.1406 actually used—"repair and maintain." The Court explained that "repair and maintain" refers to "restoring or returning something . . . to a prior state or condition," whereas "design" refers not to restoration but to an "initial conception," so the concepts are "unmistakably disparate." *Renny*, 478 Mich at 501. While this distinction was important to the issue before the *Renny* Court—whether a design-defect claim was cognizable under MCL 691.1406—the main takeaway from this distinction for present purposes is that MCL 691.1406 refers to repairing and maintaining public buildings, i.e., restoring or returning them to a prior state or condition.

off and sloped landing.[3] Plaintiff contends that, if this construction differed from the intended design, then it cannot constitute a "design defect." Regardless of whether this constitutes a design defect, however, it does not constitute a failure to repair and maintain because a building cannot be restored or returned to a prior state or condition that it was never in. See *id*. ("Central to the definitions of 'repair' and 'maintain' is the notion of restoring or returning something, in this case a public building, to a prior state or condition.").

That said, it is possible that, in some instances, MCL 691.1406 can impose a duty on a governmental agency to bring a public building into a state or condition that it was never in before, though this is not clearly established by caselaw. See *GC by Cavazos v American Athletix, LLC*, 514 Mich 853, 855-856 (2024) (CAVANAGH, J., concurring) (opining that "the plain meaning of 'maintain' as articulated in *Renny* includes keeping a building compliant with the latest safety protocols, including the current building codes"). Plaintiff, at one point, alleges that the condition outside of Door 15 was "grossly violative of current safety requirements," but despite citing Chief Justice CAVANAGH's concurrence in *GC by Cavazos*, plaintiff never argues that defendant's alleged violation of "current safety regulations" outside Door 15 constituted a failure to "maintain" the area. The only conclusion that one can draw from this is that plaintiff intentionally chose not to argue on appeal that defendant failed to "maintain" the area outside of Door 15 by not keeping the area compliant with the latest safety protocols. We therefore consider that argument waived.

Lastly, plaintiff argues that *Renny* was wrongly decided, but she recognizes that this Court is bound by *Renny* and must follow its holding. That is obviously correct. See *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 447; 761 NW2d 846 (2008).

Affirmed.

/s/ Michael J. Kelly
/s/ Colleen A. O'Brien
/s/ Andrew J. Lievense

[3] Plaintiff admitted below that it was "undisputed . . .that defendant . . . created this hazard at the time of construction . . . ." And Pratt similarly opined that this condition was "created" when "the contractor . . . poured the concrete landing."