STATE OF MICHIGAN

COURT OF CLAIMS

RICHARD J. TIMM,

Plaintiff,

v

Case No. 25-000012-MZ

MICHIGAN DEPARTMENT OF CORRECTIONS,

Hon. James Robert Redford

Defendant.
_____/

OPINION AND ORDER GRANTING DEFENDANT'S 3/24/26 RENEWED MOTION FOR SUMMARY DISPOSITION

Plaintiff, Richard J. Timm, filed suit against defendant, Michigan Department of Corrections (MDOC), for injuries he suffered while working for a subcontractor conducting repairs at Chippewa Correctional Facility (CCF). Defendant responded to plaintiff's first amended complaint with a motion for summary disposition under MCR 2.116(C)(7) (governmental immunity). The Court denied that motion on May 2, 2025, and permitted plaintiff to file a second amended complaint. Specifically, the Court determined that plaintiff adequately pleaded his claim in avoidance of governmental immunity under the public building exception and that questions of fact precluded summary disposition at that time.

Following the Court's ruling, plaintiff filed a second amended complaint and the parties engaged in discovery. On March 24, 2026, defendant again moved for summary disposition, this time under MCR 2.116(C)(7), (8), and (10). Plaintiff has not responded. The record now supports

summary disposition under MCR 2.116(C)(7) and (10) and the Court GRANTS defendant's motion.

I. BACKGROUND

Plaintiff was injured when he fell into an open trench or pit in a floor at CCF. At the time of his injury, plaintiff was employed by Berger & King (B&K), which had subcontracted with Moore Trosper Construction Company to conduct a portion of a construction project at CCF, which is owned by the state of Michigan and operated by the MDOC. Plaintiff was looking up at the pipes along the ceiling and did not see that the grate had been removed from the pit. Plaintiff fell in and was injured.

II. EXCLUSIVE REMEDY

Defendant contended in its first summary disposition motion that plaintiff's recovery was limited by the exclusive remedy provision of the Worker's Compensation Disability Act (WCDA). The Court agrees that plaintiff's exclusive remedy against his direct employer, B&K, was worker's compensation. In relation to defendant's first motion for summary disposition, the Court advised defendant that it did not believe the MDOC fit into the category of a co-employer for purposes of the exclusive remedy provision. Defendant has made no attempt to explain how the MDOC was plaintiff's employer in its renewed summary disposition motion. Accordingly, the Court again denies summary disposition on this ground.

III. PUBLIC BUILDING EXCEPTION

In its first motion for summary disposition, defendant contended that plaintiff's complaint did not plead the cause of action in avoidance of governmental immunity. The Court determined

or who has access to it. Photographs of record show an apparent industrial storage area. Defendant contends that because the MSI building is "inside the secured perimeter of the prison, which is not open to the public," the area was not accessible to the general public.

After careful review of precedent regarding the applicability of the public building exception to prisons, the Court concludes that an industrial storage area is akin to areas previously found to be not open or accessible to the public. Such an area is comparable to an attic in a building being renovated into a prison, *Steele*, 215 Mich App at 711, or the basement of a prison's housing unit, *id.* at 714-715, citing *Smith v Michigan*, unpublished memorandum opinion of the Court of Appeals, issued June 25, 1993 (Docket No. 134714). Plaintiff has presented no evidence to rebut that presented by defendant that this was an industrial storage area that was under repair and was not accessible to members of the general public.

Accordingly, the Court GRANTS defendant's motion for summary disposition under MCR 2.116(C)(7).

IV. MCR 2.116(C)(10)

Defendant further contends that summary disposition is warranted under MCR 2.116(C)(10) because plaintiff has not created a genuine issue of material fact on the issue of negligence.

Plaintiff alleged that he was an invitee on defendant's property. In relation to an invitee, "The landowner has a duty of care, not only *to warn the invitee of any known dangers*, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs *or warn of any*

that paragraph 10 of the first amended complaint, which is repeated in the second amended complaint, sufficiently pled the public building exception to governmental immunity. That paragraph states that defendant "had a duty to maintain safe public buildings and to protect" plaintiff "as an invitee, from conditions on its premises that presented unreasonable risks of harm, including maintaining the uncovered or open trench drain."

Defendant again contends that it is entitled to governmental immunity, this time with the benefit of discovery. Plaintiff has failed to respond.

MCL 691.1406 states, 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 public building exception of MCL 691.1406 can be applicable to buildings with limited access, including prisons, under certain circumstances. *Green v Dep't of Corrections*, 386 Mich 459; 464; 192 NW2d 491 (1971); *Steele v Dep't of Corrections*, 215 Mich App 710, 715; 546 NW2d 725 (1996). For the exception to apply, "the public building" must be "open for use by members of the public." *Steele*, 215 Mich App at 714. "The focus is on the accessibility to members of the general public, rather than on the extent to which the building might benefit the community." *Id.* "[T]he exception does not apply to buildings that are specifically closed to members of the public." *Id.* at 715.

The January 8, 2024 Accident Investigation Report described that the injury occurred in the "MSI Building." Neither party explained exactly what the purpose of the "MSI Building" is

discovered hazards." *James v Alberts*, 464 Mich 12, 19-20; 626 NW2d 158 (2001) (emphasis added).

Plaintiff conceded at his deposition that he was warned about the open trench before his accident. Plaintiff asserted that someone should have placed barriers around the open trench. He also asserted that the pictures taken of the area do not reflect the conditions at the time. Specifically, it was darker in the area than shown in the pictures. Plaintiff stated, "And we were working on pipe in the air. So, of course, I'm going to look up." However, plaintiff admitted the most salient point for his negligence claim: he was warned before heading into the area that there was an open trench that he needed to be mindful of. Plaintiff therefore cannot establish that defendant breached its duty of care. Summary disposition is also warranted under MCR 2.116(C)(10).

IT IS ORDERED:

1. The Court GRANTS defendant's motion for summary disposition under MCR 2.116(C)(7) and (10).
2. The Court DISMISSES plaintiff's complaint in its entirety and with prejudice.
3. This is a final order resolving all issues in this case.

Date: May 1, 2026

James Robert Redford
Judge, Court of Claims