# STATE OF MICHIGAN

# COURT OF CLAIMS

AMBER MODEST,

Plaintiff,

v

Case No. 25-000062-MD

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Hon. Michael J. Riordan

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

On June 20, 2023, plaintiff, Amber Modest, was injured in a single-vehicle accident allegedly caused by a depression in the roadway on northbound Telegraph Road at the intersection with Grand River Avenue, an area which was then a designated construction zone. According to medical records and the accident report, plaintiff was travelling at 60 miles per hour in an area with a 35 mile per hour speed limit, in violation of MCL 257.627(1), and lost control of her vehicle. The vehicle was propelled over the median and across all southbound lanes before colliding into an apartment building. Immediately following the accident, plaintiff was transported to the hospital where blood testing revealed her blood alcohol level was 0.191 per 100 milliliters of blood, more than double the legal limit. See MCL 257.625a(7) (setting the legal intoxication level as 0.08 grams or more per 100 milliliters of blood).

Plaintiff filed suit against defendant, Michigan Department of Transportation, in April 2025, raising a negligence claim under the highway exception to governmental immunity. During discovery, plaintiff's post-accident medical records were provided to defendant, and defendant learned of plaintiff's blood alcohol level.

On October 6, 2026, defendant moved for summary disposition of plaintiff's action under MCR 2.116(C)(10) based on MCL 600.2955a, which states, in relevant part:

> (1) It is an absolute defense in an action for the death of an individual or for injury to a person or property that the individual upon whose death or injury the action is based had an impaired ability to function due to the influence of intoxicating liquor or a controlled substance, and as a result of that impaired ability, the individual was 50% or more the cause of the accident or event that resulted in the death or injury. If the individual described in this subsection was less than 50% the cause of the accident or event, an award of damages shall be reduced by that percentage.
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> (2) As used in this section:
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> * * *
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> (b) "Impaired ability to function due to the influence of intoxicating liquor or a controlled substance" means that, as a result of an individual drinking, ingesting, smoking, or otherwise consuming intoxicating liquor or a controlled substance, the individual's senses are impaired to the point that the ability to react is diminished from what it would be had the individual not consumed liquor or a controlled substance. An individual is presumed under this section to have an impaired ability to function due to the influence of intoxicating liquor or a controlled substance if, under a standard prescribed by [MCL 257.625a] a presumption would arise that the individual's ability to operate a vehicle was impaired.

Defendant contends that plaintiff's blood alcohol level and level of speed in a construction zone establish that she was more than 50% at fault for her accident, providing defendant with an absolute defense to plaintiff's negligence claim.

Plaintiff has not responded to defendant's motion for summary disposition despite being given additional time to do so after her counsel withdrew from representing her.

The undisputed record evidence is clear that plaintiff's blood alcohol level was well beyond the legal limit at the time of her accident. Pursuant to MCL 600.29551(2)(b), the Court must presume that plaintiff was operating with "an impaired ability to function" and that her "ability to operate a vehicle was impaired." Plaintiff was also travelling at nearly double the posted speed limit in a construction zone. MCR 2.116(G)(4) provides:

> When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

Because plaintiff failed to respond to defendant's summary disposition motion, she provided no affidavits or other evidence to counter the evidence presented by defendant. Based on the record before the Court, plaintiff failed to create a genuine issue of material fact for trial and dismissal is appropriate.

IT IS ORDERED:

1. The Court GRANTS defendant's motion for summary disposition pursuant to MCR 2.116(C)(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 matter.

Date: 11/18/2026

Michael J. Riordan
Judge, Court of Claims