Order

Michigan Supreme Court
Lansing, Michigan

November 13, 2026

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

SC: 169198
COA: 371030
Van Buren CC: 2022-072271-NO

CRYSTAL LEDUKE, Personal Representative of the ESTATE OF BRANDON DAVID CHAMBERS,
Plaintiff-Appellant,

v

CITY OF SOUTH HAVEN,
Defendant-Appellee,
and

KATE HOSIER and WILLIAM BRENNER,
Defendants.

On October 7, 2026, the Court heard oral argument on the application for leave to appeal the September 17, 2025 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CAVANAGH, C.J. (*dissenting*).

I respectfully dissent from the Court's denial of leave in this case. The issue in this case is whether there is a genuine issue of material fact as to whether beaches managed by defendant, the city of South Haven (the City), were operated primarily for profit. Viewed in a light most favorable to plaintiff, the financial documents and testimony present a genuine issue of material fact regarding whether the City's operation of the beaches was conducted primarily to produce a pecuniary profit, MCL 691.1413. Therefore, the City was not entitled to summary disposition under MCR 2.116(C)(7). Accordingly, I would reverse the Court of Appeals' opinion and remand to the trial court to conduct an evidentiary hearing on whether the proprietary-function exception applies. See *Dextrom v Wexford Co*, 287 Mich App 406, 430-433 (2010).

I. FACTUAL AND PROCEDURAL BACKGROUND

In September 2020, Brandon Chambers drowned while swimming along South Beach in South Haven, Michigan. Plaintiff Crystal LeDuke, as personal representative of Chambers's estate, filed suit asserting premises-liability and negligence claims against the

City.[1] To avoid governmental immunity, plaintiff pleaded under the proprietary-function exception, MCL 691.1413, arguing that the City operated its beaches primarily for a profit. Plaintiff asserted that the City commingled beach funds, which are largely obtained via parking fees, with general funds and presented an expert witness who testified that several unidentified transfers in the general fund were evidence of the City's intent to profit from its beaches.

The City moved for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10), arguing that the proprietary-function exception did not apply when the City's primary purpose was to operate the beaches on a self-sustaining basis.[2] In support of its motion, the City relied on financial reports, an expert witness's affidavit, and the deposition testimony of the City's finance director, Michelle Argue, who testified that the beaches were self-sustaining.

In response to the City's motion for summary disposition, plaintiff argued that there was a genuine issue of material fact. She supported this with an expert witness's affidavit regarding the financial reports and with Ms. Argue's deposition testimony.

First, plaintiff's expert asserted that the financial reports indicated that the City's "parks and beach" had a net revenue of $221,028 and that $680,804 was transferred from "business-type activities," which includes beach funds, to "governmental activities." Plaintiff pointed out that, at her deposition, Ms. Argue could not explain whether nonbeach parks were included in "parks and beach," whether the $221,028 net revenue stayed in the beach fund or was transferred into the general fund at the end of the year, or how much, if any, of the $680,804 transfer came from beach funds.

Second, plaintiff's expert opined that transfers from beach funds for motor pool expenses, "admin fees—general fund," and "police depart fees—general fund" were subjective. The financial reports documented that the City charged the beach fund $15,906 in 2017, $42,755 in 2018, $19,843 in 2019, $50,000 in 2020, and $18,478 in 2021 for motor pool expenses. Ms. Argue testified that these motor pool expenses were shared between

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[1] Although not relevant to this appeal, plaintiff alleges that decedent drowned when he went under the surface due to rip currents. Plaintiff argues that the City was negligent because it issued a yellow flag warning, which indicates a medium hazard, rather than issuing a red flag warning, which indicates a high hazard.

[2] While the City moved for summary disposition under MCR 2.116(C)(7) and (10), the arguments below focused on whether the City was immune from suit. Therefore, we consider this issue under MCR 2.116(C)(7). See *LeDuke v South Haven*, unpublished per curiam opinion of the Court of Appeals, issued September 17, 2025 (Docket No. 371030), p 2 n 2.

the City's departments but acknowledged that a vehicle might be used on the beach one day and somewhere else the next day. Ms. Argue also testified that the administrative and police department fees reflect annual sums transferred from beach funds to the general fund for beach-related services. Plaintiff asserts that neither Ms. Argue nor the financial reports explain how any of these fees were calculated.

Third, plaintiff's expert noted that the City's "payments in lieu of taxes" were transferred from beach funds to the general fund. The expert asserted that these payments were subjective—increasing from $13,560 in 2017 to $21,958 in 2021—and optional. Ms. Argue explained that these payments were to cover what the City would be owed if the beaches were privately owned. Plaintiff argued, again, that neither Ms. Argue nor the financial reports explain how the payments were calculated.

Finally, plaintiff's expert identified several other unexplained figures, including unexplained charges for "other contractual services" of $130,684 in 2017, $106,587 in 2018, $148,931 in 2019, $56,736 in 2020, and $74,042 in 2021. There were also unexplained transfers for $47,648 in 2019 and $43,506 from the beach fund to the general fund in 2020.

The trial court denied the motion for summary disposition under MCR 2.116(C)(7), finding a genuine issue of material fact regarding whether the City operated its beaches primarily for profit. Particularly, the trial court found that (1) plaintiff's expert asserted that the primary purpose of the beach was to produce a profit, (2) the beach actually produced a profit, and (3) plaintiff's expert identified transfers from the beach funds that appeared unlikely to correlate with any expense the City incurred in managing the beach. This conflicting testimony created a genuine issue of material fact that could not be resolved by summary disposition. The trial court was prepared to conduct an evidentiary hearing and make findings of fact and law to determine whether the proprietary-function exception applied.

The City appealed the trial court's denial of its motion for summary disposition to the Court of Appeals. The Court of Appeals granted leave, reversed the trial court's decision, and remanded for the trial court to enter an order granting the City's motion for summary disposition under MCR 2.116(C)(7). *LeDuke v South Haven*, unpublished per curiam opinion of the Court of Appeals, issued September 17, 2025 (Docket No. 371030), p 4. The Court of Appeals relied on Ms. Argue's deposition testimony, which concluded that profits were used to pay administrative fees, motor pool expenses, and police department fees for expenses associated with the beach. Further, the City used specialized financial software to keep track of beach funds within the City's general fund, and no expert

could identify any unrelated transfers when reviewing the City's accounting records.[3] Therefore, the Court of Appeals majority concluded that the City's evidence was sufficient to establish that the beaches were not operated for the primary purpose of generating a profit.

Judge PATEL dissented and concluded that there was a genuine issue of material fact regarding whether the proprietary-function exception applied. She concluded that the City produced limited financial information to support its motion and primarily relied on self-serving testimony and basic financial statements. Further, Judge PATEL agreed with the trial court that plaintiff's expert identified several expenditures that were subjective in nature and could not be correlated to actual expenses incurred in managing the beaches. Based on these subjective transfers, a reasonable juror could conclude that beach funds were funding other governmental activities in the City. Therefore, Judge PATEL held that the trial court's order denying summary disposition should be affirmed.

II. LEGAL BACKGROUND

A. STANDARD OF REVIEW

This Court reviews a decision of summary disposition de novo to determine whether the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118 (1999). Summary disposition is appropriate as a matter of law when the claim is barred by governmental immunity. *Id*. at 118-119. When reviewing a motion under MCR 2.116(C)(7), this Court must accept well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. *Id*. at 119. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them. MCR 2.116(G)(5); *Maiden*, 461 Mich at 119. When facts are undisputed and reasonable minds cannot differ on their legal effect, the court decides whether the claim is barred as a matter of law. *Dextrom*, 287 Mich App at 429. However, when a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. *Id*.

B. PROPRIETARY-FUNCTION EXCEPTION

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[3] The Court of Appeals majority concluded that "plaintiff presented *no evidence*—aside from the expert's speculative opinion—demonstrating that beach funds were actually included in the questioned transfers or that the funds were actually used for nonbeach purposes." *LeDuke*, unpub op at 4. It characterized plaintiff's expert's opinion as " 'mere conjecture or speculation,' " which is insufficient to create a genuine issue of material fact. *Id*., quoting *McNeill-Marks v MidMichigan Med Ctr-Gratiot*, 316 Mich App 1, 16 (2016).

Under the governmental tort liability act (GTLA), MCL 691.1401 *et seq*., a governmental agency is generally immune from tort liability if it is "engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). MCL 691.1413 provides an exception if the activity at issue is (1) conducted primarily for the purpose of producing a pecuniary profit and (2) is not normally supported by taxes and fees.[4] *Hyde v Univ of Mich Bd of Regents*, 426 Mich 223, 258 (1986). When determining whether a governmental agency's primary purpose is to produce a pecuniary profit, courts consider (1) whether profit is generated and (2) where the profit is deposited and how it is spent. *Id*. at 258-259. Profit deposited in a general fund or used to finance unrelated functions can indicate that the activity's primary purpose is to produce a pecuniary profit. *Id*. at 259. Conversely, revenue used on a self-sustaining basis to pay current and long-range expenses involved in operating the activity can indicate that the activity's primary purpose is not to produce a pecuniary profit.[5] *Id*.

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[4] The City did not argue for summary disposition on the ground that operation of a waterfront park is an activity that is normally supported by taxes or fees. Therefore, the issue before this Court is whether the City's beach operations were conducted for the primary purpose of producing a pecuniary profit.

[5] In its amicus curiae briefing, the Michigan Association for Justice (MAJ) provided a good overview and background for the proprietary-function exception, MCL 691.1413.

Amicus explains that, historically, governmental activities involved such things as schools, elections, and libraries. These activities are for the benefit of all, not revenue-producing, and the proprietary-function exception would not apply. See MCL 691.1413.

However, governments now provide amenities that enhance the quality of life for smaller, defined groups who use them. A reasonable way to fund these is to make the activity self-sustaining; those who benefit bear its cost. For example, a government-owned baseball field may charge a user fee to recoup its cost so that others, who do not play baseball, do not bear the cost. The proprietary-function exception is unlikely to apply to a self-sustaining activity like this. See *Hyde*, 426 Mich at 259 ("If the revenue is used only to pay current and long-range expenses involved in operating the activity, this could indicate that the primary purpose of the activity was not to produce a pecuniary profit.").

The MAJ points out that some self-sustaining activities also generate sufficient revenue to subsidize other governmental projects. For example, a government-owned baseball field may charge a higher user fee, not only to recoup its cost but also to make a profit. The government may then use those profits to fund other public services, benefiting residents who do not use the field. The proprietary-function exception is more likely to apply to a for-profit activity like this. See *Hyde*, 426 Mich at 259 ("If the profit is deposited in the governmental agency's general fund or used to finance unrelated functions, this could indicate that the activity at issue was intended to be a general revenue-raising

In *Dextrom v Wexford County*, the Court of Appeals concluded that there was a question of fact regarding whether a landfill was operated for the primary purpose of making a pecuniary profit. *Dextrom*, 287 Mich App at 424. The county filed a motion for summary disposition under MCR 2.116(C)(7) and (C)(10), which the trial court denied. *Id*. at 413-414. The trial court concluded that the county's purpose in operating the landfill for pecuniary profit had not been conclusively proved or refuted by the numerous exhibits filed by the parties. *Id*. at 414. The landfill began accumulating substantial profits in 1990 and began transferring landfill funds to finance unrelated projects in 2000. *Id*. at 424. Also, statements from county officials indicated an intent to make a profit from the landfill. *Id*. Based on this evidence, the Court of Appeals concluded that the trial court did not err by determining that there was a question of material fact regarding whether the landfill was operated for the primary purpose of producing a pecuniary profit. *Id*.

III. ANALYSIS

A. GENUINE ISSUE OF MATERIAL FACT

As the moving party, the City bore the burden of supporting its immunity defense under MCR 2.116(C)(7) with documentary evidence. See *AFSCME v Detroit*, 267 Mich App 255, 261 (2005). Because plaintiff pleaded under the proprietary-function exception to governmental immunity, MCL 691.1413, the City bore the burden of proving that its operation of the beaches was not done for the primary purpose of producing a pecuniary profit. To prove this, the City argued that its beaches were self-sustaining. Therefore, the City had to show that, even if profit was generated, it was used to pay current and long-range expenses and was not deposited into a general fund or used to finance unrelated functions. See *Hyde*, 426 Mich at 259.

It is undisputed that the City's beaches consistently generated a profit between 2017 and 2021. See *Hyde*, 426 Mich at 258-259. Therefore, the City's documentary evidence had to show that the profit was used on a self-sustaining basis. See *Hyde*, 426 Mich at 259. To that end, the City relied on Ms. Argue's testimony and its financial reports. But as Judge PATEL and plaintiff's expert witness noted, Ms. Argue's testimony and the financial reports do not show that net revenue was used to pay current and long-range expenses involved in operating the beaches.

First, the financial reports indicate that "parks and beach" had a net revenue of $221,028 and that $680,804 was transferred from "business-type activities," which includes beach funds, to "governmental activities." Ms. Argue could not explain whether the $221,028 of net revenue stayed in the beach fund or was transferred into the general

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device."). A government might thus want to make a profit so that an activity is still appealing to those who do not *directly* benefit from the activity.

fund at the end of the year and could not explain how much, if any, of the $680,804 transfer came from beach funds. Therefore, these payments could be profit deposited into a general fund. See *Hyde*, 426 Mich at 259.

Second, the City admits that it deposits beach funds into the general fund, but states that it does so to pay current expenses regarding motor pool expenses, administrative fees, and police department fees. See *id*. But neither the financial reports nor Ms. Argue explained how these fees were calculated. These calculations are especially relevant because the City pays motor pool expenses, administrative fees, and police department fees for various departments. Therefore, if the calculated fees exceeded the costs, beach funds could be used to finance unrelated functions. See *Hyde*, 426 Mich at 259.

Third, the financial reports showed "payments in lieu of taxes" that Ms. Argue testified were to cover what the City would be owed if the beaches were privately owned. At their core, these payments are not a current *expense* involved in operating the activity on a self-sustaining basis. As plaintiff's expert witness noted, these payments are *optional*. Further, these payments are deposited into the general fund and neither the financial reports nor Ms. Argue explained how these optional payments are calculated. Therefore, these payments could be profit that is deposited into a general fund. See *Hyde*, 426 Mich at 259.

Fourth, the financial reports show unexplained charges for "other contractual services" and unexplained transfers. Neither the financial reports nor Ms. Argue explained what these payments are for, let alone how they were calculated. Without an explanation, these payments could be profit that is deposited into a general fund. See *Hyde*, 426 Mich at 259.

In summary, it is undisputed that the City makes a profit from its beaches. The City claimed that net revenue was used to pay current and long-range expenses involved in operating the beaches, but it failed to support this claim by explaining how those payments were calculated. Further, it failed to show how the "payments in lieu of taxes" are an expense involved in *operating* the beaches and left other payments from beach funds completely unexplained. Because of these holes in the City's produced evidence, it failed

to meet its burden under MCR 2.116(C)(7) to show that it was entitled to immunity.[6]

B. CONJECTURE OR SPECULATION

The Court of Appeals majority concluded that plaintiff's expert's opinion was " 'mere conjecture or speculation,' " which is insufficient to establish a genuine issue of material fact. *LeDuke*, unpub op at 4, quoting *McNeill*, 316 Mich App at 16. But plaintiff's expert relied on the City's own documentary evidence that left open a genuine issue of material fact regarding whether beach funds were deposited into a general fund or used to finance unrelated functions. Rather than speculating, plaintiff's expert relied on the silence within the City's financial reports and Ms. Argue's testimony to conclude that there is a genuine issue of material fact. The City's inability to answer how beach profits are spent is record evidence that is viewed in a light most favorable to plaintiff, and as such, presents a genuine issue of material fact regarding whether the City's primary purpose for operating the beaches is to produce a pecuniary profit. See *Maiden*, 461 Mich at 119.

IV. CONCLUSION

The dispute here is whether the beaches are operated for a self-sustaining purpose or whether beach funds are used to finance unrelated functions. Although the City argues that beach funds are deposited into the general fund to pay current and long-range expenses, see *Hyde*, 426 Mich at 259, the documentary evidence does not prove this point. This leaves open a genuine issue of material fact making summary disposition inappropriate. See *Dextrom*, 287 Mich App at 429. Because application of the proprietary-function exception to governmental immunity is a question of law, the trial court must resolve the genuine

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[6] The Court of Appeals recently decided in a similar case that the city of Muskegon was not entitled to summary disposition under MCR 2.116(C)(7). See *Hooffstetter v Muskegon*, unpublished per curiam opinion of the Court of Appeals, issued November 4, 2024 (Docket No. 376823), pp 8-9. In that case, a man drowned at a beach owned by the city of Muskegon and the plaintiff, as personal representative of his estate, sued the city under the proprietary-function exception, MCL 691.1413. *Id*. at 1, 8. The plaintiff alleged that the city collected approximately $800,000 in revenue from parking at the beach and $1,042.41 in parking fees in 2022. *Id*. at 8. The city refuted this by citing its financial reports, but the Court of Appeals determined that it was unclear where the parking fees or cost of operating the beach were line-itemed in the report. *Id*. The Court of Appeals concluded that "the city has not pointed to any particular financial record demonstrating the cost of operating [the beach] or refuting application of the propriety function exception as a matter of law." *Id*. at 9. Therefore, the panel concluded that the plaintiff was entitled to discovery, and the trial court's grant of summary disposition was premature. *Id*.

issue of material fact before determining whether the exception applies. See *id*. at 430-433. For these reasons, I would reverse the Court of Appeals' opinion and remand to the trial court to conduct an evidentiary hearing to make findings of fact and law on whether the proprietary-function exception applies. See *id*.

BOLDEN, J., joins the statement of CAVANAGH, C.J.

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I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 13, 2026

Clerk