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Supreme Court Defines Notice Requirement for Invoking Highway Exception to Governmental Immunity

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The Michigan Supreme Court recently issued a decision that defines the notice required under MCL 691.1403 to invoke the highway exception to governmental immunity, as outlined in Michigan's Governmental Tort Liability Act, MCL 691.1401, *et seq.*

In *Wilson v Alpena County Road Commission*, the plaintiff was riding her bike on a public road over which the defendant road commission had jurisdiction. The plaintiff was "snaking" her way around numerous potholes in the road when she was thrown from her bike. As a result of the fall, the plaintiff began to regularly suffer migraines and blackouts.

The plaintiff sued the road commission, complaining that the potholes had existed over 30 days and that the road commission had failed to maintain the road in a manner safe for public travel. The road commission moved for summary disposition, arguing the highway exception did not apply because it had no notice of the alleged defect. Specifically, the road commission asserted that a road crew had patched the potholes two weeks before the plaintiff's accident and it had no complaints after the patching.

The plaintiff responded that regardless of the patching, the deteriorated condition of the road was enough to show the required notice. The trial court disagreed and granted the road commission's motion.

The Michigan Court of Appeals reversed, concluding that the plaintiff had sufficiently pleaded in avoidance of governmental immunity and that material questions of fact existed regarding the notice and causation elements. *Wilson v Alpena County Road Commission*, 263 Mich App 141 (2004).

The Michigan Supreme Court affirmed, applying the basic rules of statutory interpretation. First, the Supreme Court noted that the highway exception's language in MCL 600.1402 imposes a duty on a governmental agency to reasonably repair and maintain a public highway so that it is "reasonably

safe and convenient for public travel.” Next, the Supreme Court referred to the language in MCL 600.1403, which requires that the governmental agency have actual or constructive notice of the defect to invoke the exception.

Linking this language together, the Supreme Court explained that the legislature intended to circumvent immunity only when the governmental agency knew of the defect and knew that the defect, if not repaired, would render the highway not “reasonably safe and convenient for public travel.” The Supreme Court explained that establishing notice of the defect without establishing that it would unreasonably endanger public travel was not sufficient.

Applying this interpretation to the facts, the Supreme Court concluded that summary disposition was improper because neither party argued the issue whether the road was reasonably safe for public travel nor whether the road commission knew that the condition was unsafe.

In so doing, the Supreme Court stated, “[w]hile all parties concede that there was notice of certain problems – that the road was bumpy and required frequent patching – these problems – do not invariably lead to the conclusion that the road was not reasonably safe for public travel.” Because neither party raised this issue, the Supreme Court concluded that summary disposition was improper and remanded for further proceedings.

For a complete copy of the Michigan Supreme Court’s decision in *Wilson v Alpena County Road Commission*, [click here](#).

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