

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GREGG ZUCCKER and BARBARA ZUCCKER,

Plaintiffs-Appellants,

v

GROSSE ILE TOWNSHIP,

Defendant-Appellee,

and

WAYNE COUNTY and AMERICAN WATER  
SYSTEMS, INC.,

Defendants.

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UNPUBLISHED

May 5, 2009

No. 279476

Wayne Circuit Court

LC No. 05-528498-CZ

Before: Wilder, P.J., and Jansen and Owens, JJ.

PER CURIAM.

Plaintiffs appeal by right from the circuit court's summary disposition in favor of defendant Grosse Ile Township (defendant, or the township), in this action alleging an exception to governmental immunity for a sewage system disposal event. Because we find that plaintiffs fail to present evidence to satisfy all of the elements for that exception, we affirm.

I

A

This action concerns a storm sewer drain traversing plaintiffs' property. Plaintiffs alternatively state that the drain serves their home, or merely traverses their property. The drain backed-up, allegedly causing an accumulation of water in the basement of plaintiffs' home. The storm drain runs from the western property line, toward the home, under the home, under the front yard, and then under the water main and East River road, and then discharges directly into the Detroit River.

Plaintiffs allege that during the winter of 2003 and 2004, maintaining furnace heat and hot water for their home became difficult, because of flooding in the basement. Plaintiffs further allege that the flooding was caused by the township's failure to repair breaks or leaks in the

water main running under East River road. According to plaintiffs, repeated leakage from the water main caused erosion of soil and support under and around the storm sewer in question.

Plaintiffs also allege, in their third amended complaint, that the leaking water main caused erosion under East River road; that this caused the road to sink, causing soil to cave into the stone sea wall and into the river. According to plaintiffs, these factors caused the storm sewer slowly to collapse, and eventually, to collapse completely, causing water to back-up into their basement.

## B

The township filed a motion for summary disposition under MCR 2.116(C)(7), (8) and (10), and in support thereof, presented the affidavit of Barry Sedlock, the director of the township's department of public works. Sedlock's affidavit averred that the township does not own the storm water drain, the drain is not under the township's care, control or jurisdiction, and that the storm drain does not connect with the township's sewage disposal system. The township argued that it is not the appropriate governmental agency against which plaintiffs can assert their claim, that the subject backup does not qualify as a defect in the township's sewage disposal system, and that the backup does not qualify as a sewage disposal system event.

Plaintiffs opposed summary disposition, claiming the applicability of an exception to governmental immunity for sewage disposal system events. In this regard, plaintiffs relied on *Linton v Arenac Co Rd Comm'n*, 273 Mich App 107; 729 NW2d 883 (2006), arguing that a sewage disposal system includes storm sewers, or systems designed for storm water drainage. Plaintiffs presented the affidavit of Mark Collins, who opined that "[d]efendant's leaky water main which intersects above the Zuccker storm drain caused the collapse of the drain." Plaintiffs also argued that there was evidence of a defect in the storm water drain. Plaintiffs cited *Linton and Willett v Waterford Charter Twp*, 271 Mich App 38; 718 NW2d 386 (2006), for the proposition that a foreign object in a sewer line constitutes a defect. Plaintiffs referred to the township as the appropriate governmental agency, but cited no authority for this proposition. Plaintiffs argued that there was a genuine issue of material fact regarding whether the township failed to take reasonable steps to repair, correct or remedy a defect, and whether a defect was a substantial proximate cause of the event. But plaintiffs did not cite to any evidence for these propositions.

Plaintiffs further argued that the storm drain services properties beyond and behind their property, and drains into the Detroit river, and that, therefore, the drain must be under the township's jurisdiction, just like the ditch was under county jurisdiction in *Linton*. "Given maps and diagrams showing drains connecting to Defendant's drain system (the Grosse Ile Drain) and survey maps also showing similar drain on the Zuccker property in Exhibit B, there remains genuine issues [sic] of material fact as to whether or not the Zuccker drain was part of the drainage 'system' . . . ."

In reply, the township argued that it is entitled to immunity as to any claim of a defect regarding the water main and its maintenance. The township argued that the water main is not a sewage disposal system. The township attached a second affidavit of Mr. Sedlock, attesting that the Grosse Ile Drain falls under the jurisdiction and control of the Wayne County Drain

Commission, and that any inspections or repairs to the Grosse Ile Drain are performed by the Wayne County Drain Commission, not the township.

The circuit court granted the township summary disposition under subrule (C)(7), on the basis that since it was undisputed that the storm water drain was not under the control and jurisdiction of the defendant, it could not be a sewage disposal system under MCL 691.1416(j).

The circuit court also concluded that there was no evidence that the township knew or should have known that the broken water main leaked and caused backfill sand to follow the water into the storm drain, causing the drain to collapse, and found that this was an alternative basis supporting the grant of summary disposition in favor of defendant under subrule (C)(7).

## II

We find that the circuit court correctly granted summary disposition, but that its reason for doing so was incorrect. Nevertheless, we will not reverse a circuit court where it reached the right result, albeit for a wrong reason. *Coates v Bastian Brothers, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007).

Statutory interpretation is reviewed de novo. *McManamon v Redford Charter Twp*, 273 Mich App 131; 730 NW2d 757; 25 IER Cases 727 (2006). Summary dispositions are reviewed de novo. *Willett, supra* at 45. Governmental immunity is a question of law, reviewed de novo. *Pierce v City of Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005), citing *Mack v City of Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002).

## III

The governmental tort liability act, or GTLA, MCL 691.1401 et seq., “provides immunity for governmental agencies, including municipalities like defendant.” *Haliw v City of Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001). The immunity granted to governmental agencies “is broad, with narrowly drawn exceptions.” *Nawrocki v Macomb Co Rd Comm’n*, 463 Mich 143, 149; 615 NW2d 702 (2000) (emphasis in original; citation omitted); *Wesche v Mecosta Co Rd Comm’n*, 267 Mich App 274, 276; 705 NW2d 136 (2005).

Exceptions to immunity are construed a manner “predicated upon a close examination of the statute’s plain language,” and courts are to avoid “add[ing] still another layer of judicial gloss to those interpretations of the statute previously issued.” *Nawrocki, supra* at 150. Courts “apply those public policy choices made by the Legislature . . . .” *Id.* at 151.

So long as the governmental agency was engaged in a governmental function, it is immune from liability, unless an exception applies. *Haliw, supra* at 302. A governmental function “is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law.” MCL 691.1401(f). The sewage disposal system event exception, MCL 691.1417, amends the GTLA to provide a remedy for damages or physical injuries caused by a sewage disposal system event. *Pohutski, supra* at 697. Here, defendant was engaged in the discharge of a governmental function, namely, repairing a public water main.

The legislature promulgated MCL 691.1416 through 691.1419 “[t]o afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages . . . caused by a sewage disposal system event . . . .” MCL 691.1417(1). Under subsection (2) of MCL 691.1417, “[a] governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event[,] and the governmental agency is an appropriate governmental agency.” MCL 691.1417(2). MCL 691.1416 through 691.1419 “abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system[,] and provide the sole legal remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of legal theory.” *Linton, supra* at 114, quoting MCL 691.1417(2).

*A sewage disposal system means:*

*all* interceptor sewers, *storm sewers*, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and *includes a storm water drainage system under the jurisdiction and control of a governmental agency*. [MCL 691.1416(j) (emphases added).]

*A sewage disposal system event* is defined as follows, in relevant part:

the overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system even if any of the following was a substantial proximate cause of the overflow or backup:

(i) An obstruction in a service lead that was not caused by a governmental agency.

(ii) A connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout. [MCL 691.1416(k).]

*An appropriate governmental agency* is defined as “a governmental agency that, at the time of the sewage disposal system event, owned or operated, *or directly or indirectly discharged into*, the portion of the sewage disposal system that allegedly caused damages . . . .” MCL 691.1416(b) (emphasis added).

Subsection (1) of MCL 691.1417 broadly requires that “a claimant . . . shall comply with this section,” MCL 691.1417(1), *and* with subsection (3), which imposes *several* requirements for a claimant to avoid governmental immunity for a discharge event. MCL 691.1471(3); *Willett, supra* at 49. Subsection (3) provides:

If a claimant . . . believes that an event caused . . . injury, the claimant may seek compensation . . . if the claimant shows that all of the following existed at the time of the event:

- (a) The governmental agency was an appropriate governmental agency.
- (b) The sewage disposal system had a defect.
- (c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.
- (d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.
- (e) The defect was a substantial proximate cause of the event and the property damage or physical injury. [MCL 691.1417(3).]

A defect is defined as “a construction, design, maintenance, operation, or repair defect.” MCL 691.1716(e). Accordingly, under subsection (3) of MCL 691.1417, the plaintiff must show the foregoing *five* elements in order to avoid governmental immunity. *Willett, supra* at 50.

We first conclude that the storm drain in question qualifies as a “sewage disposal system.” In *Linton*, there was a backup of water in a roadside drainage ditch which caused flooding of the plaintiffs’ property. The plaintiffs alleged that the defendant had deposited debris in the ditch, eventually causing a culvert to be dammed. The defendant moved for summary disposition on the basis of governmental immunity. The trial court granted the motion, concluding that the drainage ditch was not a drainage system under the sewage disposal system event exception to governmental immunity.

This Court reversed and remanded, holding that the sewage disposal systems to which the exception to immunity applies include storm water drainage systems. The panel held that further discovery was required to determine whether the ditch was part of a system of connected drains, because, if it was, it would qualify as a sewage disposal system.

Here, the storm water sewer or drain qualifies as a sewage disposal system because the definition of a sewage disposal system references “*all . . . storm sewers . . .*” MCL 691.1416(j) (emphasis added). Under MCL 691.1416(j), a sewage disposal system “*includes* a storm water drainage system under the jurisdiction and control of a governmental agency.” Thus, the fact that a drainage system is *not* under the jurisdiction or control of a governmental agency does not *exclude* the drainage system from being a sewage disposal system if it so qualifies through other means, as it does in the instant case. Accordingly, the private storm sewer under plaintiffs’ property qualifies as a sewage disposal system.

However, though plaintiffs present ample evidence that the township knew of a defect *in the water main*, the water main is *not* the sewage disposal system. MCL 691.1417(3) requires, inter alia, that (1) “[*t*]he sewage disposal system had a defect,” (emphasis added), and (2) that the governmental agency knew or, in the exercise of reasonable diligence, should have known, of the defect. MCL 691.1417(3)(b) and (c). Thus, defendant’s knowledge of a defect in the water main (because defendant dispatched crews on a number of occasions to repair the water main) is not sufficient to show that the township knew or should have known of a defect in the private storm sewer under plaintiff’s property. MCL 691.1417(3)(b) and (c). The neighbors’ affidavits do not

show that the township knew or should have known of a defect in the storm sewer. Rather, the affidavits relate to causation of the collapse in the storm sewer. Thus, plaintiffs fail to present evidence or argument on this issue, which is a prerequisite to avoiding the township's immunity.

#### IV

In conclusion, the trial court did not err in granting the township's motion for summary disposition under subrule (C)(7). The township is entitled to governmental immunity, where, although the obstructed storm sewer is a sewage disposal system, plaintiffs failed to adduce evidence that the township knew or should have known of a defect in the sewage disposal system.

Affirmed. No costs are taxable pursuant to MCR 7.219, a public question involved.

/s/ Kurtis T. Wilder

/s/ Kathleen Jansen

/s/ Donald S. Owens