MSC Opinion: Robinson v. City of Lansing

9. April 2010

Yesterday the Michigan Supreme Court unanimously concluded that an individual who trips and is injured on a sidewalk adjacent to a *county* highway must, in order to establish that the municipality is liable, overcome a rebuttable inference that would not apply if the individual had tripped on an identical sidewalk located adjacent to a *state* highway. The rebuttable inference, known as the "two-inch rule," is the presumption that the sidewalk was properly maintained if the "discontinuity defect" in the sidewalk is less than two inches. While at least one member of the Court thought this outcome produced an arbitrary distinction, all agreed that this outcome was the most natural reading of the plain language of MCL § 691.1402a. Justice Markman authored the opinion in *Robinson v. City of Lansing*, No. 138669 (Apr. 8, 2010), and Justices Young and Weaver each wrote separate concurrences.

The case began when Ms. Robinson, while walking on a brick sidewalk adjacent to Michigan Avenue, a state highway in Lansing, stepped in a depression on the sidewalk, tripped, and fell, fracturing her wrist. She sued the city of Lansing for her injuries. While the government is usually immune to tort suits, Michigan's government tort liability act waives that immunity as to the duty to maintain highways in reasonable repair. MCL § 691.1402. This waiver, though, has limits, for the next statutory provision, MCL § 619.1402a(2), provides first that a municipality is liable only if it knew or should have known at least 30 days earlier of the defect that was the proximate cause of the injury, and second that "[a] discontinuity defect of less than 2 inches creates a rebuttable inference that the municipal corporation maintained the sidewalk . . . in reasonable repair."

Justice Markman, writing for the Court, noted that § 619.1402a(1) specifically refers to the municipal corporation's duty to maintain a "county highway" and that the reference to "the highway" in § 619.1402a(2) refers back to "county highway" as an antecedent. Reading § 619.1402a as a whole, the Court concluded that there was no indication that the Legislature intended to broaden the scope of the provision from addressing only county highways to addressing all highways, including state ones. Accordingly the Supreme Court reversed the decision of the Court of Appeals and reinstated the decision of the trial court.

Justice Young concurred and wrote separately to offer another plausible interpretation and to urge the Legislature to clarify its intent by revisiting the statute. Noting that the rule announced by the decision is "somewhat arbitrar[y]," he explained that it would be possible to interpret § 619.1402a as a compilation of highway rules, with essentially unrelated subsections. Under this reading, the phrase "county highway" in subsection 1 might not have been the antecedent for "the highway" mentioned in subsection 2's two-inch rule, and therefore subsection 2's two-inch rule would not be limited to county highways. He concurred, however, because he was "fairly convinced" that the majority's interpretation was the best interpretation of the statute as a whole.

Justice Weaver wrote separately to state that she agreed “the plaintiff has a more persuasive position” and to agree with Justice Young.