

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2014

Robert P. Young, Jr.,
Chief Justice

146603

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

HELEN YONO,
Plaintiff-Appellee,

v

SC: 146603
COA: 308968
Ct of Claims: 11-000117-MD

DEPARTMENT OF TRANSPORTATION,
Defendant-Appellant.

On January 16, 2014, the Court heard oral argument on the application for leave to appeal the December 20, 2012 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.302(H)(1). In lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for further proceedings not inconsistent with this order. Under MCR 2.116(C)(7), summary disposition is proper when a claim is barred by immunity granted by law. To survive such a motion, the plaintiff must allege facts justifying the application of an exception to governmental immunity. *Wade v Dep't of Corrections*, 439 Mich 158, 163 (1992). In reviewing the motion, a court must review all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. *Sewell v Southfield Public Schools*, 456 Mich 670, 674 (1998); MCR 2.116(G)(5). On remand, the Court of Appeals shall consider: (1) what standard a court should apply in determining as a matter of law whether a portion of highway was “designed for vehicular travel,” as used in MCL 691.1402(1); and (2) whether the plaintiff has pled sufficient facts to create a genuine issue of material fact under this standard.

We do not retain jurisdiction.

CAVANAGH, J., would deny leave to appeal.



t0325

I, Larry S. Royster, 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.

April 1, 2014

Clerk