

# MICHIGAN LAWYERS WEEKLY

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## **Road Department not liable for dirt-road accident**

### ***COA grants government immunity***

The Macomb County Department of Roads was granted governmental immunity by a split Michigan Court of Appeals panel after a motion for summary disposition failed at the circuit court level.

The decision in *Menard v. Imig and Macomb County Department of Roads* (MiLW No. 08-98432, 13 pages) is related to a car-bike accident on Hipp Road in Bruce Township between 35 Mile and 36 Mile roads.

A pickup truck struck a 15-year old bicyclist on the dirt road. The crash victim required four spine surgeries and sustained burns.

Ann Arbor attorney Carson J. Tucker represented the MCDR and argued that road conditions did not directly cause the accident.

"You had a lot of elements that caused this accident, not the least of which was the primary defendant's admission that he was unable to stop his vehicle in time to avoid the collision," Tucker said.

### **Accident facts**

The COA's opinion noted that ongoing construction near Hipp Road had caused traffic to be much heavier than normal on the local dirt road.

Several individuals testified that the road was filled with potholes and parts would wash out after rain. Increased sediment and plant build-up also decreased the width of the road.

MCDR officials acknowledged that removing sediment from the side of the road was part of regular maintenance.

Around 10 p.m. on June 7, 2013, a 15-year old boy was biking with friends. The boy would try to stay as far to the right side of the road as possible so cars could pass him and his friends.

However, two vehicles traveling in opposite directions soon approached each other while the victim was still biking on the road.

The driver of the southbound vehicle engaged her high-beam headlights when she thought she saw a flash of light. She was then able to see two of the victim's friends biking. She did not see the victim.

The northbound pickup truck driver was momentarily blinded by the high-beam lights and did not see the victim until the southbound driver returned her lights to normal brightness.

It was too late for the northbound pickup truck driver to see the victim, who was struck and dragged underneath the truck. He remained trapped until emergency personnel arrived.

### **Lawsuit filed**

The victim initially filed suit against the northbound driver alone, but later added the MCDR as a defendant.

The victim's claim against the MCDR alleged that that narrow nature of the road was an actionable defect and fell under the highway exception to governmental immunity.

The MCDR motioned for summary disposition before the Macomb County Circuit Court, which disagreed with the defendants.

The MCDR appealed, and the COA panel of Patrick M. Meter, Colleen A. O'Brien and Michael J. Riordan heard the appeal.

Riordan and O'Brien ruled in favor of the MCDR in the Sept. 6 unpublished opinion, while Meter dissented.

Riordan and O'Brien concluded that the plaintiff failed to provide proof of causation necessary to survive the motion for summary disposition.

"Governmental entities are fundamentally immune from all liability unless there's an exception. In this case, we were dealing with the highway defect exemption," Tucker said. "However, it's the plaintiff's burden to show the government is not immune from suit."

According to the COA's opinion, the plaintiff attempted to show causation by stating the road's potholes impacted the pickup driver's stopping time. The plaintiff had testimony from experts who said road deterioration can negatively impact stopping time.

However, the pickup driver stated in a deposition that he didn't believe the road condition prevented his truck from stopping right away.

The plaintiff also claimed the road was a cause of the accident because he was dodging potholes. However, his dodging of potholes was not a cause for being in front of the pickup truck right before the collision, the COA noted.

### **Road width**

The key point in disagreement between the judges, and the subject of Meter's dissent, was the road's width and if that played into the accident.

The plaintiff had two theories for how the road's width contributed to the crash. First, the plaintiff argued that if the road was wider, both vehicles and the bike could have fit safely.

However, testimony from the bicyclist and pickup driver suggested that the accident would have still happened. Both parties testified that they would travel far to the right of the road to avoid oncoming traffic. From there, a conclusion was drawn that even if the road was wider, both the bicyclist and driver still would have been in the same position relative to one another.

The court did acknowledge that a different theory relating to increased glare was sufficient to create a question of fact.

The plaintiff provided expert witness testimony that because of the narrowed road, the high-beams of the opposite vehicle brought greater glare than normal, and prevented the pickup driver from seeing the bicyclist.

### **Proximate cause**

Despite the court's acknowledgement of the glare theory, Riordan and O'Brien wrote that it still did not rise to be a proximate cause of the teen's injuries.

The judges defined proximate cause as involving a "determination that the connection between the wrongful conduct and the injury is of such a nature that it is socially and economically desirable to hold the wrongdoer liable, and depends in part on foreseeability."

The COA opinion stated the teen's injuries were not a "foreseeable, natural and probable" result of the MCDR's failure to maintain the width of the road.

It goes on to state that the road's width would not have been an issue if high-beams were never used or if the pickup driver would have braked when temporarily blinded.

### **Dissent**

In his dissent, Meter quoted an accident reconstructionist who testified that the width of the road “without a doubt” contributed to the accident.

The accident reconstructionist added that testimony from the oncoming driver indicates that she could reach out and touch the truck as they passed each other, despite the truck and bicyclist being as far over to the opposite side of the road as possible.

Meter wrote the plaintiff presented adequate evidence of proximate cause.

“The combination of the narrowness of the road and the related increased glare from headlights made it entirely foreseeable that a safety issue would arise if a bicyclist were using the road. The defective road was not merely a conduit for the negligent acts of others,” Meter wrote.

Plaintiff’s attorney Mark Granzotto did not respond to requests for comment on this case.

*If you would like to comment on this story, email Thomas Franz at [tfranz@mi.lawyersweekly.com](mailto:tfranz@mi.lawyersweekly.com).*

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