STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff–Appellant,

v

THOMAS CLARK and CITY OF DETROIT,

Defendants–Appellees,

and

DETROIT EDISON,

Defendant.

UNPUBLISHED
August 9, 1996

No. 177141
LC No. 93-323943 CZ

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo*, JJ.

PER CURIAM.

Plaintiff appeals as of right from that portion of a circuit court order granting summary disposition for defendant City of Detroit pursuant to MCR 2.116(C)(8). We affirm.

Thomas Clark, an employee of the City of Detroit, was operating a city-owned front-end loader in an alley when he struck a utility pole. The collision caused a power line to snap, igniting a fire at a nearby house that was insured by plaintiff. Plaintiff paid the homeowner for the damage to the house and became subrogated to all his claims in the matter. Plaintiff subsequently brought negligence claims against Clark and the City, and a condemnation claim against the City. The trial court granted summary disposition in favor of Clark and the City on all of the claims. Plaintiff now contends that the trial court erred in granting summary disposition in favor of the City.[1]

Plaintiff argues that the trial court erred in granting summary disposition upon a finding that the negligence claims were barred by the no-fault act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.* We disagree.

---

*Circuit judge sitting on the Court of Appeals by assignment.

Plaintiff first contends that its negligence claims against the City were authorized under the civil liability act, MCL 257.401; MSA 9.2101, and the government owned vehicles exception of the governmental tort liability act, MCL 691.1405; MSA 3.996(105). As the trial court recognized, however, despite those provisions, tort liability for property damage arising out of the ownership or use of a motor vehicle has been abolished under § 3135 of the no-fault insurance act, MCL 500.3135; MSA 24.13135. See *Fisher v Lowe,*, 122 Mich App 418, 419 n 1; 333 NW2d 67 (1983).

Plaintiff argues that this case falls outside the scope of the no-fault act because the front end loader driven by Clark, acting as a City employee, was not a "motor vehicle" as that term is defined in subsection 3101(2)(e) of the no-fault act, MCL 500.3101(2)(e); MSA 24.13101(2)(e). The argument is without merit. Subsection 3101(2)(e) defines a motor vehicle as a vehicle operated or designed for operation on a public highway by power other than muscular power that has more than two wheels. The term "highway" is the generic name for all kinds of public ways, including alleys. *Advisory Opinion on Constitutionality of 1976 PA 295, 1976 PA 297,* 401 Mich 686, 706; 259 NW2d 129 (1977); *Burdick v Harbor Springs Lumber Co,* 167 Mich 673, 679; 33 NW 822 (1911). Plaintiff's pleadings do not aver that the alley in which Clark was performing City work with City equipment was in fact a private alley, or that Clark was trespassing when he hit the utility pole. Because a fair reading of the pleadings indicates that the front end loader was being operated on a public highway at the time of the accident, it falls within the no-fault act's definition of a motor vehicle. *Jones v Continental Casualty Co,* 186 Mich App 656, 658; 465 NW2d 45 (1991).

Plaintiff argues that if the no-fault act's abolition of tort liability applies to this case, as we hold, then plaintiff is entitled to no-fault property protection benefits from the City, since the City was self-insured. Plaintiff's complaint did not include a claim for no-fault benefits; however, the City was sued in its capacity as owner of the front end loader, not in its capacity as insurer.

Finally, plaintiff asserts that the trial court erred in dismissing its condemnation claim against the City. Again, we disagree.

An inverse condemnation action is one brought by a landowner whose property has been taken for public use without the commencement of condemnation proceedings. *Electro-Tech* v *Campbell Co,* 433 Mich 57, 88-89; 445 NW2d 61 (1989). A " taking" for purposes of inverse condemnation means that the complained of governmental action has permanently deprived the landowner of any possession or use of the land. *Electro-Tech, supra* at 89. Where such a taking has occurred, the landowner is entitled to just compensation for the value of the property taken. *Id.*

In an action for inverse condemnation, "it is not enough for the owner to prove injury to his property by the defendant with resultant damages. Rather, [the] plaintiff must prove that the condemnor's actions were of such a degree that a taking occurred." *Hart* v *Detroit,* 416 Mich 488, 501; 331 NW2d 438 (1982). There is no exact formula to determine when such a de facto taking has occurred, but " there must be some action by the government specifically directed toward the plaintiff's property that has the effect of limiting the use of the property." *C Murphy, MD, PC* v *Detroit,* 201 Mich App 54, 56; 506 NW2d 5 (1993).

---

*Circuit judge sitting on the Court of Appeals by assignment.

Here, the alleged taking was the financial loss occasioned by the fire damage to the house owned by plaintiff's insured. Clearly, there was no intentional government action directed toward the insured's property. Furthermore, the injury to the property was merely transitory. Therefore, plaintiff's condemnation claim is completely without merit and the trial court did not err in so finding.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo

---

[1] Although plaintiff does not challenge the grant of summary disposition in favor of Clark, we note that summary disposition was appropriate under MCL 691.1407(2); MSA 3.996(105), which provides that employees of governmental entities are immune from tort liability for damage caused to property while they are acting within the scope of their employment, so long as the employee's conduct does not amount to gross negligence. Plaintiff's complaint makes no allegation that Clark was acting outside the scope of his employment or that his conduct amounted to gross negligence. Therefore, plaintiff's complaint fails to state a claim on which relief could be granted against Clark.

---

*Circuit judge sitting on the Court of Appeals by assignment.