STATE OF MICHIGAN

IN THE SUPREME COURT

(ON APPEAL FROM THE MICHIGAN COURT OF APPEALS)

ESTATE OF STEPHEN BRADLEY, Deceased, by NANCY MICK, Personal Representative,	Supreme Court No. 145055
Plaintiff-Appellee,	Court of Appeals No. 299640
v	Lower Court No. 09-001348-AV
KENT COUNTY SHERIFF'S DEPARTMENT,	
Defendant-Appellant. /	

NOTICE OF HEARING

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF THE MICHIGAN MUNICIPAL LEAGUE, MICHIGAN MUNICIPAL LEAGUE LIABILITY & PROPERTY POOL, MICHIGAN TOWNSHIPS ASSOCIATION AND THE PUBLIC CORPORATION LAW SECTION

PROOF OF SERVICE

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ESTATE OF STEPHEN BRADLEY, Deceased, by NANCY MICK, Personal Representative,	Supreme Court No.
Plaintiff-Appellee,	Court of Appeals No. 299640
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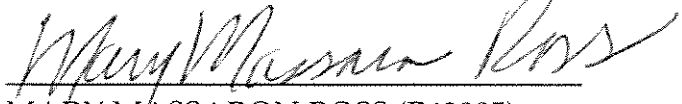
KENT COUNTY SHERIFF'S DEPARTMENT,	
Defendant-Appellant. /	

NOTICE OF HEARING

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that this Motion for Leave to File Brief Amicus Curiae of The Michigan Municipal League, The Michigan Municipal League Liability & Property Pool, and The Michigan Townships Association, and the Public Corporation Law Section shall be brought on for hearing in the Michigan Supreme Court on or after Tuesday, June 26, 2012. The Motion will not be argued orally unless previously so ordered in advance by the Court.

PLUNKETT COONEY

By: 

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Dated: June 14, 2012

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF THE MICHIGAN MUNICIPAL LEAGUE, MICHIGAN MUNICIPAL LEAGUE LIABILITY & PROPERTY POOL, MICHIGAN TOWNSHIPS ASSOCIATION AND THE PUBLIC CORPORATION LAW SECTION

NOW COME Michigan Municipal League, Michigan Municipal League Liability & Property Pool, Michigan Townships Association, and the Public Corporation Law Section, by and through their attorneys, and respectfully request, pursuant to MCR 7.306(D), that this Court grant this motion for the following reasons:

1. The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors, which is broadly representative of its members. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance.

2. The Michigan Municipal League Liability & Property Pool was established under 1982 PA 138 to develop and to administer a group program of liability and property self-insurance for Michigan municipalities. The principal objectives of the Michigan Municipal League Liability & Property Pool are to establish and to administer a municipal risk management service, to reduce the incidents of property and casualty

losses occurring in the operation of local governmental functions, and to defend the Pool's members against liability losses.

3. The Michigan Townships Association is a Michigan non-profit corporation whose membership consists of in excess of 1,000 townships within the State of Michigan (including both general law and charter townships) joined together for the purpose of providing education, exchange of information, and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan.

4. The Public Corporation Law Section of the State Bar of Michigan (PCLS) provides information, education, and analysis about issues of concern to the State Bar, through meetings, seminars, public service programs, and the like.[1]

5. Amici have an interest in the proper development of the law of governmental immunity. The doctrine of governmental immunity has historically served to shield government defendants from liability for tort claims brought against

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[1] The Public Corporation Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest. The position expressed is that of the Public Corporation Law Section only and is not the position of the State Bar of Michigan. To date, the State Bar of Michigan does not have a position on this matter. The total mbership for the Public Corporation Law Section is 637.

The Section Council of the State Bar of Michigan Public Corporation Law Section consists of 21 elected members. The Public Corporation Law Section adopted the position after discussion and vote. 13 members of the Section Council were present at the April 28, 2012 meeting at which this item was presented for consideration. The number who voted in favor of this position was 12. The number who voted opposed to this position was 0. The number who abstained from vote was 1.

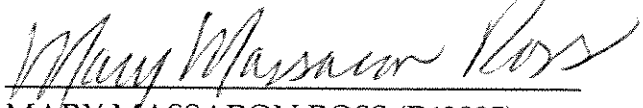
them. The potential for an influx of suits should plaintiffs be permitted to bring tort claims under the guise of contempt could be substantial. Amici have an interest in seeing that governmental immunity is properly interpreted to protect against tort lawsuits and afford immunity in accordance with the Michigan Legislature's intent. Amici therefore seek to ensure that MCL 691.1401, *et seq.* is interpreted by this Court in a manner that will prohibit tort suits under the contempt statute, MCL 600.1701, *et seq.*

6. Counsel for Amici has read the briefs at the Court of Appeals stage and the briefs filed in this Court, and believe that this additional argument and discussion will lend substantial assistance to the Court in resolving this appeal. Amici, based on the collective experience of its members, is well positioned to explain the practical effect that the Court of Appeals' decision, left intact, would have on the law of immunity in Michigan.

7. Attached hereto is the amicus curiae brief prepared and submitted in support of the Kent County Sheriff's Department's Application for Leave to Appeal, which was filed on May 3, 2012.

WHEREFORE, Amicus Curiae Michigan Municipal League, Michigan Municipal League Liability & Property Pool, Michigan Townships Association, and the Public Corporation Law Section, respectfully request, pursuant to MCR 7.306(D) and MCR 7.313, that this Court grant this motion and accept their brief amicus curiae for filing and consideration.

PLUNKETT COONEY

By: 

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ESTATE OF STEPHEN BRADLEY, Deceased, by NANCY MICK, Personal Representative,

Plaintiff-Appellee,

v

KENT COUNTY SHERIFF'S DEPARTMENT,

Defendant-Appellant. /

Supreme Court No.

Court of Appeals No. 299640

Lower Court No. 09-001348-AV

PROOF OF SERVICE

Deanna Nagy, states that on June 14, 2012, a copy of Notice of Hearing, Motion for Leave to File Brief Amicus Curiae of the Michigan Municipal League, the Michigan Municipal League Liability & Property Pool, the Michigan Townships Association, and the Public Corporation Law Section, Proof of Service, was served on:

Timothy L. Taylor, Esq.
990 Monroe Ave., NW
Grand Rapids, MI 49503

Peter A. Smit , Esq.
Timothy E. Eagle
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Grand Rapids, MI 49504

by depositing same in the United States Mail with postage fully prepaid.

Deanna Nagy

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STATE OF MICHIGAN

IN THE SUPREME COURT

(ON APPEAL FROM THE MICHIGAN COURT OF APPEALS)

ESTATE OF STEPHEN BRADLEY, Deceased, by NANCY MICK, Personal Representative,

Petitioner-Appellee,

v

KENT COUNTY SHERIFF'S DEPARTMENT,

Respondent-Appellant. /

Supreme Court No. 145055

Court of Appeals No. 299640

Lower Court No. 09-001348-AV

BRIEF OF AMICUS CURIAE MICHIGAN MUNICIPAL LEAGUE, MICHIGAN MUNICIPAL LEAGUE LIABILITY & PROPERTY POOL, MICHIGAN TOWNSHIPS ASSOCIATION, AND THE PUBLIC CORPORATION LAW SECTION

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TABLE OF CONTENTS

INDEX TO AUTHORITIES

Page

CASES

STATUTES

RULES

OTHER AUTHORITIES

MISCELLANEOUS

STATEMENT OF THE BASIS OF JURISDICTION

On May 3, 2012, Respondent/Appellant Kent County Sheriff's Department filed an application for leave to appeal the March 22, 2012 opinion of the Court of Appeals. This Court has jurisdiction to consider and grant the application pursuant to MCR 7.301(A)(2).

STATEMENT OF THE QUESTION INVOLVED

I.

When It Adopted The Governmental Tort Liability Act Which Immunizes Governmental Parties From All Tort Liability Absent Exceptions Inapplicable Here, Did The Michigan Legislature Intend To Immunize Governmental Parties From Liability For "All Civil Wrongs," Even When The Tortious Conduct Is Labeled As An Action For Civil Contempt Brought Under Michigan Statute?

Petitioner-Appellee Nancy Mick, Personal Representative of the Estate of Stephen Bradley, answers "No."

Respondent-Appellant Kent County Sheriff's Department answers "Yes."

Amicus Curiae Michigan Municipal League, Michigan Municipal League Liability & Property Pool, Michigan Townships Association, and the Public Corporation Law Section answer "Yes."

The Kent County Circuit Court presumably answers "Yes."

The Court of Appeals answered "No."

STATEMENT IDENTIFYING THE JUDGMENT APPEALED FROM AND THE REQUESTED RELIEF

Michigan Municipal League, Michigan Municipal League Liability & Property Pool, Michigan Townships Association, and the Public Corporation Law Section file this amici curiae brief in support of Kent County Sheriff's Department's position on appeal. The Court of Appeals' published opinion in *Estate of Stephen Bradley v Kent County Sheriff's Department,* Michigan Court of Appeals Slip Opinion, __Mich App __; __ NW2d __ (March 22, 2012) (Docket No. 299640), eviscerates governmental immunity for tortious conduct in a manner inconsistent with precedent including *Tate v City of Grand Rapids,* 256 Mich App 656; 671 NW2d 84 (2003), and its progeny. If allowed to stand, the published decision will allow plaintiffs to obtain compensatory relief free from the constraints of governmental immunity simply by relabeling tortious conduct as a cause of action for contempt under MCL 600.1701. This will create more (and duplicative) litigation, increase societal costs, and unsettle the state of governmental immunity. And it contravenes the policy choices expressly set forth in the statutes enacted by the Michigan Legislature to provide broad immunity to governmental parties for all "civil wrongs" or tort liability, "regardless of how the legal responsibility is determined." *Tate, supra,* at 660. Amici curiae urge this Court to issue a ruling that the governmental immunity codified in MCL 691.1401, *et seq.* applies to *all* causes of action seeking compensatory relief for tortious conduct – regardless of whether pled as civil contempt or otherwise.

STATEMENT OF INTEREST

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance.

The Michigan Municipal League Liability & Property Pool was established under 1982 PA 138 to develop and administer a group program of liability and property self-insurance for Michigan municipalities. The principal objectives of the Pool are to establish and administer municipal risk management service, to reduce the incidents of property and casualty losses occurring in the operation of local government functions, and to defend the Pool's members against liability losses.

The Michigan Townships Association (MTA) is a non-profit organization with well over one thousand Michigan townships as members. The heart of the MTA's mission is to provide a unified voice for Michigan's township governments by representing townships before the Legislature, the executive office and state agencies.

The Public Corporation Law Section of the State Bar of Michigan (PCLS)

provides information, education, and analysis about issues of concern to the State Bar, through meetings, seminars, public service programs, and the like.[1]

Amici have a longstanding interest in the proper development of the law of governmental immunity, and their interest coincides with that of the public. This state's jurisprudence has long recognized that the issue of governmental liability is of "public interest," *Ross v Consumer Powers Co*, 420 Mich 567, 672, n 24; 363 NW2d 641 (1984), and therefore a prime candidate for this Court's review. MCR 7.302(B)(2). Past precedent afforded immunity to governmental actors for all tort liability, regardless of the labeling attached to the conduct. In this way, the judiciary properly effectuated the Legislature's intent that governmental parties be protected with a broad sweep of immunity. *Nawrocki v Macomb County Road Com'n*, 463 Mich 143, 156; 615 NW2d 702 (2000). This, in turn, allows governmental parties to undertake their public duties free from intimidation and the distractions and expenses of defending tort lawsuits filed against

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The Section Council of the State Bar of Michigan Public Corporation Law Section consists of 21 elected members. The Public Corporation Law Section adopted the position after discussion and vote. 13 members of the Section Council were present at the April 28, 2012 meeting at which this item was presented for consideration. The number who voted in favor of this position was 12. The number who voted opposed to this position was 0. The number who abstained from vote was 1.

them. *Rowland v Washtenaw County Road Com'n*, 477 Mich 197, 223 n 18; 731 NW2d 41 (2007); *Mack v City of Detroit*, 467 Mich 186, 203, n 18; 649 NW2d 47 (2002); *Grahovac v Munising Tp*, 263 Mich App 589, 595; 689 NW2d 498 (2004). That is in the interest of all.

Amici Curiae therefore request that this Court grant leave to appeal the Court of Appeals' published decision, which, on an issue of first impression, allows a plaintiff to circumvent governmental immunity by relabeling tortious conduct as a cause of action for civil contempt under MCL 600.1701. Failure to do so will have a devastating impact on governmental parties and open the floodgates of tort litigation to unfounded proportions which the Legislature expressly sought to restrict.

STATEMENT OF FACTS

Amici Curiae rely upon the statements of facts set forth in Respondent-Appellant Kent County Sheriff's Department's application for leave to appeal.

SUMMARY OF THE ARGUMENT

Michigan's broad immunity was enacted to protect governmental parties from the distractions and expenses of defending tort lawsuits filed against them in the same way that the doctrine of sovereign immunity had historically protected the state. See generally *Ross v Consumers Power Co*, 420 Mich 567, 596; 363 NW2d 641 (1984). This Court emphasized that governmental immunity "protects the state not only from liability, but from the great public expense of having to contest a trial." *Odom v Wayne County*, 482 Mich 459, 478; 760 NW2d 217 (2008). The statute also is predicated on the theory that governmental parties engage in a great deal of risky conduct in the course of serving the public, often are seen as deep-pocket defendants, and lawsuits against them may serve to deter useful and socially desirable conduct because of the risk of suit. To guard against this, the Legislature enacted broad protections for governmental parties of all kinds. The statute was intended to protect governmental parties against the burdens of discovery and trial, as well as against the potential for liability. *Id.* at 479.

Justice Robert H. Jackson's words offer a vitally important perspective on this case and perhaps some insight into the Court of Appeals' error. He referenced the old legal maxim that hard cases make bad law, but then observed, "We agree that this is a hard case, but we cannot agree that it should be allowed to make bad law." *American Communications Commission v WOKO*, 329 US 223, 229; 67 S Ct 213; 91 L Ed 204 (1936). An unusual case ought not be allowed to distort long-standing legal principles that

have resulted in a comprehensive, clear, governmental immunity doctrine in Michigan that effectuates the broad protection afforded by Michigan's legislature. Nor should it be used to announce a rule or series of rules that will weaken the statutory grant of protection by allowing plaintiffs whose claims are barred by governmental immunity to plead alternative causes of action that, regardless of how artfully labeled, ultimately resound in tort.

Left unreviewed by this Court, the Court of Appeals' published opinion will do just that. By allowing a tort claim to proceed under the guise of a civil contempt petition, the Court of Appeals has opened the floodgates of litigation well beyond the Legislature's intent. A broad spectrum of governmental employees previously protected by immunity is now at risk of liability for civil contempt for conduct undertaken in the course of a governmental function. The courts of this State will be overwhelmed with plaintiffs, unsuccessful in their tort actions, re-characterizing tortious conduct as civil contempt to gain a second bite at the proverbial apple. This Court has the opportunity now, before opportunistic plaintiffs rely on the Court of Appeals' published decision, to restore teeth to the Governmental Tort Liability Act and clarify the outer limits, if any, of governmental immunity and the ability of a plaintiff to plead around what is, at its core, a tort claim. Failure to address and reverse the Court of Appeals' decision will not only provide an additional forum for individuals with tort claims to seek and possibly obtain relief against entities and individuals that should be

afforded the protections of governmental immunity, it will also result in an influx of litigation and an increased strain on this State's trial and appellate courts. Amici recognize the judiciary's need to protect its power to enforce its orders. But this power may and should be vindicated in a manner that does not gut the historic and legislatively-enacted protections afforded to governmental defendants by the Governmental Tort Liability Act. Leave to appeal is therefore proper.

ARGUMENT

When It Adopted The Governmental Tort Liability Act Which Immunizes Governmental Parties From All Tort Liability Absent Exceptions Inapplicable Here, The Michigan Legislature Intended To Immunize Governmental Parties From Liability For "All Civil Wrongs," Even When The Tortious Conduct Is Labeled As An Action For Civil Contempt Brought Under Michigan Statute.

After approximately a decade of debate about the nature and proper test for common law immunity and the passage of several statutes attempting to codify some form of immunity for public entities and those who act for them, the Legislature enacted the present statute, MCL 691.1401, *et seq*. The statute was carefully designed to provide broad protection to public entities of all types, to abolish many of the old distinctions, and to replace them with a new statutory test that would be easier to apply and more predictable in outcome. It abolished the use of the distinction between ministerial and discretionary as a basis for imposing liability onto individuals. MCL 691.1407(2). And it made other changes, all intended to facilitate a broad protection for governmental entities and those acting on their behalf, while providing clear tests for the limited exceptions to immunity.

Under MCL 691.1407(1), a governmental agency is immune from suit for tort liability when engaged in the exercise or discharge of a governmental function. *Ross v Consumers Power Co (On Rhg)*, 420 Mich 567; 363 NW2d 641 (1984). Governmental

officers and employees are afforded similar immunity from tort liability under MCL 691.1407(2). The broad immunity granted to governmental agencies and those acting on their behalf under Michigan's governmental immunity statute is limited by narrowly drawn statutory exceptions. *Jackson v Detroit*, 449 Mich 420, 427; 537 NW2d 151 (1995). As this Court stated in *Nawrocki v Macomb Co Road Comm*, 463 Mich 143, 155-56; 615 NW2d 702 (2000).

> Governmental immunity is the public policy, derived from the traditional doctrine of sovereign immunity, that limits imposition of tort liability on a governmental agency...Immunity from tort lability, as provided by MCL 691.1407, is expressed in the broadest possible language – it extends immunity to all governmental agencies for all tort liability whenever they are engaged in the exercise or discharge of a governmental function.

The Court of Appeals' published decision in this case, left uncorrected by this Court, threatens to eviscerate the broad immunity enacted by the Legislature and upon which governmental parties justifiably rely upon in the course of their public duties. By concluding that the Governmental Tort Liability Act does not apply to compensatory contempt damages sought under MCL 600.1721, governmental parties will no longer be immunized from tort liability so long as the plaintiff labels the action as one for contempt or some other obscure claim. Historically, "tort" was broadly defined, and remains so today, in order to encompass claims for compensatory damages like civil contempt, which is a species of tort liability. The Court of Appeals' decision in this case improperly narrows the definition of tort in a manner which will afford opportunistic

plaintiffs a means to circumvent immunity even where the substance of the claim resounds in tort. And it ignores the history and purpose of the contempt statute, which was to maintain the power of the courts, not to compensate individuals. For these reasons, and for those more fully set forth below, Amici Curiae respectfully request this Court grant Kent County Sheriff's Department's application for leave to appeal.

A. Historically, the concept of tort is broad and encompasses claims for "all civil wrongs," including the compensatory damages sought here.

Traditionally, "[c]ommon-law tort actions were brought under the writs of trespass and trespass on the case. Trespass remedied direct, forcible tortious injuries, while the later-developed trespass on the case remedied indirect or consequential harms." *City of Monterey v Del Monte Dunes at Monterey, Ltd*, 526 US 687, 729-30; 119 S Ct 1624; 143 L Ed 2d 882 (1999) (citations omitted). Trespass on the case "was the precursor to a variety of modern-day tort claims, including negligence, nuisance, and business torts." Black's Law Dictionary 1509 (7th ed. 1999).

The word "tort" has a technical meaning which developed gradually in the law according to Prosser and Keaton. W Page Keeton, Prosser and Keeton On the Law of Torts 2 (5th ed 1984). From the French word for "twisted," tort means a "civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages." (*Id.*, § 1, p 2). In other words, the law holds a civil defendant responsible for what the law regards as unjustified. (*Id.*, p 4). Torts encompass "miscellaneous civil wrongs, ranging from simple, direct interferences with the person,

such as assault, battery, and false imprisonment, or with property, as in the case of trespass or conversion, up through various forms of negligence, to disturbances of intangible interests, such as those in good reputation or commercial or social advantage." (*Id.*, p 3). In contrast to contract, quasi-contract, and criminal law, tort law "is directed toward compensation of individuals, rather than the public, for losses which they have suffered within the scope of their legally recognized interests generally, rather than one interest only, where the law considers that compensation is required." (*Id.*, pp 5-6). "The law of tort, then, is concerned with the allocation of losses arising out of human activities; and since these cover a wide scope, so does this branch of the law." (*Id.*, p 6). The primary purpose of tort law "is to compensate for the damage suffered, at the expense of the wrongdoer." (*Id.*, § 2, p 7).

The law of torts as it developed in Michigan prior to July 7, 1986 reflects acceptance of these notions. See *Odom v Wayne County*, 482 Mich 459, 470; 760 NW2d 217 (2008); *Brewer v Perrin*, 132 Mich App 520, 528-529; 349 NW2d 198 (1984) (recognizing that government actors, acting on behalf of the sovereign, must often engage in conduct that would be tortious if done by a private actor, but that is justified when done on behalf of a government by an individual acting in good faith and with a reasonable belief that his or her conduct is justified). Recognizing this broad definition of tort as "'[a] civil wrong for which a remedy may be obtained,'" courts of this State have determined that "[t]he GTLA unambiguously grants immunity from all tort

liability, i.e., all civil wrongs for which legal responsibility is recognized, *regardless of how the legal responsibility is determined*, except as otherwise provided in the GTLA." *Tate v City of Grand Rapids*, 256 Mich App 656, 660, 671 NW2d 84 (2003).

B. Nothing in the history of contempt law indicates that the damages awarded to a private citizen pursuant to the contempt statute are different in nature than any other tort damages; indeed, the overriding historical purpose of contempt proceedings has been to maintain the power of the courts, not to compensate individuals.

"Civil contempt is designed to force the contemnor to comply with an order of the court." *Cunningham v Hamilton County, Ohio*, 527 US 198, 207; 119 S Ct 1915; 144 L Ed 2d 184 (1999). "The traditional justification for the relative breadth of the contempt power has been necessity: Courts independently must be vested with 'power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates, and ... to preserve themselves and their officers from the approach and insults of pollution.'" *Int'l Union, United Mine Workers of Am v Bagwell*, 512 US 821, 831; 114 S Ct 2552; 129 L Ed 2d 642 (1994), quoting *Anderson v Dunn*, 6 Wheat 204, 227; 5 L Ed 242 (1821).

Blackstone discussed the common-law practice in contempt cases, instructing that "laws without a competent authority to secure their administration from disobedience and contempt would be vain and negatory." *Schick v United States*, 195 US 65, 69; 24 S Ct 826, 8271 49 L Ed 99 (1904), quoting in 4 Commentaries on the Laws of England 286-287. Indeed,

> The power to fine and imprison for contempt, from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge. It is a power inherent in all courts of record, and coexisting with them by the wise provisions of the common law. A court without the power effectually to protect itself against the assaults of the lawless, or to enforce its orders, judgments, or decrees against the recusant parties before it, would be a disgrace to the legislation, and a stigma upon the age which invented it. [*United States v Barnett*, 376 US 681, 699-700; 84 S Ct 984; 12 L Ed 2d 23 (1964), quoting of *Watson v Williams*, 36 Miss 331 (1858).]

Michigan courts have emphasized that the contempt power is important "to enable courts to enforce their orders, judgments, and decrees, and to preserve the confidence and respect of the people, without which the rights of the people cannot be maintained and enforced." *Catsman v City of Flint*, 18 Mich App 641, 648; 171 NW2d 684 (1969), quoting *In re Chadwick*, 109 Mich 588; 67 NW 1071 (1896). And this attribute of the courts has traditionally been seen as "inherent and a part of the judicial power of constitutional courts[.]" *In re Huff*, 352 Mich 402, 415-16; 91 NW2d 613 (1958). Contempt statutes, "are in affirmation of the common-law power of courts to punish for contempts, and, while not attempting to curtail the power, they have regulated the mode of proceeding and prescribed what punishment may be inflicted." *Catsman*, 18 Mich App at 648, quoting *Langdon v Wayne Circuit Judges*, 76 Mich 358, 367; 43 NW 310 (1889).

But to the extent that the contempt statute allows compensation of an individual for damages suffered, it performs the same function as tort law. Proceedings for civil contempt may be instituted to preserve and enforce the rights of private parties to suits

and to compel obedience of orders and decrees made to enforce those rights and administer the remedies to which the court has found the parties are entitled. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 500; 608 NW2d 105 (2000). There are two types of civil contempt sanctions, coercive and compensatory. *In re Contempt of Dougherty*, 429 Mich 81, 97; 413 NW2d 392 (1987). "Where compensation is extended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy." (*Id.* at 98, quoting *United States v United Mine Workers*, 330 US 258, 303-304; 67 S Ct 677; 91 L Ed 884 (1947)).

Courts must be careful to avoid mixing the various objectives of contempt of court into a single proceeding. In fact, this Court has cautioned trial courts "from combining criminal and civil contempt proceedings as it may cause undue confusion and complications." *In re Contempt of Dougherty*, 429 Mich at 100, n 18, citing *Dobbs*, Remedies, p 98. Further, in his dissent in *United Mine Workers, supra*, Justice Rutledge aptly observed that "[i]n every other context than one of contempt, the idea that a criminal prosecution and a civil suit for damages or equitable relief could be hashed together in a criminal-civil hodgepodge would be shocking to every American lawyer and to most citizens." 330 US at 364 (Rutledge, J., dissenting). In the opinion of Justice Rutledge, the Constitution did not contemplate "that there should be in any case an

admixture civil and criminal proceedings in one. Such an idea is altogether foreign to its spirit." *Id.*

In Michigan, compensatory contempt relief is provided for in MCL 600.1721.[2] *In re Contempt of Dougherty*, 429 Mich at 98. Under this provision, "the trial court must order a contemnor to indemnify any person who suffers a loss as a result of the contemnor's misconduct." *Taylor v Currie*, 277 Mich App 85, 102; 743 NW2d 571 (2008). Accordingly, to the extent that the contempt statute allows compensation of an individual for damages suffered, it performs the same function as tort law. Stated otherwise, civil contempt with compensatory damages is a species of tort liability, but the wrongful conduct is the violation of a court order – rather than some other form of tortious conduct.

C. By allowing a plaintiff to plead a tort through the civil contempt statute, the Court of Appeals' opinion disregards the well-established principle that a court must look past the label of a claim to the substance of the conduct asserted.

A party cannot avoid dismissal of a cause of action by artful pleading. *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999). Courts must look past the label chosen by the plaintiff to the substance of the claim asserted. *Local 1064, RWDSU AFL-*

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[2] MCL 600.1721 provides: "If the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him, in addition to the other penalties which are imposed upon the defendant. The payment and acceptance of this sum is an absolute bar to any action by the aggrieved party to recover damages for the loss or injury."

CIO v Ernst & Young, 449 Mich 322, 327 n 10; 535 NW2d 187 (1995) (stating that "in ruling on a statute of limitations defense the court may look behind the technical label...to the substance of the claim asserted."); *Adams v Adams*, 276 Mich App 704, 710-11; 742 NW2d 399 (2007) ("[i]t is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim."); *Attorney General v Mereck, supra* at 9 ("a court is not bound by a party's choice of labels.").

The Court of Appeals' opinion in this case represents a drastic departure from this principle. The thrust of the plaintiff's claim is that the sheriff's negligence in failing to comply with a duty to execute a pick-up order caused the decedent's death. The plaintiff therefore brought a wrongful death tort action, which was properly dismissed on the basis of governmental immunity. In hopes of obtaining a second bite at the apple to secure compensatory damages, the plaintiff then filed a civil contempt petition under MCL 600.1701 and sought compensatory contempt relief under § 1721. But the substance of the plaintiff's claim remained unchanged. The plaintiff's petition continued to allege tortious conduct for the same acts or omissions for which summary disposition was previously granted on the basis of governmental immunity. Thus, regardless of how relabeled, the gravamen of the claim alleged here is a civil wrong – i.e. a tort – to which governmental immunity applies. *Tate*, 256 Mich App at 657 (governmental immunity applies to "all civil wrongs".).

Although it properly noted that the issue turned on whether a "contempt action is a cause of action that is separate and distinct from one that is grounded in tort liability," the Court of Appeals failed to analyze the case under that framework. (Court of Appeals Opinion, p 4). Summarily concluding that contempt is a non-tort claim, the Court of Appeals' opinion gives short shrift to the substance of the claim, which the above-cited precedent instructs the court to examine. Had the Court of Appeals looked past the label of the plaintiff's contempt action, it would have necessarily determined that the plaintiff's contempt action sounded in tort and was barred by governmental immunity.

A very recent decision from another panel of the Court of Appeals illustrates the panel's error in this case and highlights the need for guidance from this Court. *Nali v City of Grosse Point Woods*, (Mich App 5/17/12) (Docket No. 304019) (**Exhibit A**). Like here, the question presented in *Nali* was whether a plaintiff can circumvent governmental immunity by re-labeling an unsuccessful negligence action as one for breach of a bailment contract. The issue in *Nali* arose after Grosse Point Woods police officers seized certain items of the plaintiff's personal property in the course of executing a search warrant at the plaintiff's home. After the plaintiff's extortion conviction was overturned, he sought to have the personal items returned. However, some of the items had been damaged by floods that occurred in the property room of the police department. The plaintiff filed a claim alleging negligence against the

defendants. The trial court granted summary disposition to the defendants on the basis of governmental immunity.

On appeal, the plaintiff asserted that the defendants' duty to protect the plaintiff's property created a bailment. Accordingly, the plaintiff argued that "governmental immunity does not apply to his claim because he alleged the breach of a bailment contract, rather than a tort." The *Nali* Court rejected the plaintiff's attempt to plead in avoidance of immunity by relabeling tortious conduct as a bailment:

> We would not dispute that in general, the police have a duty to maintain property seized during an investigation. However, even if plaintiff were able to show a bailment this Court does not look to the label chosen by plaintiff to determine the substance of the complaint and, in turn, whether governmental immunity applies. See, *Spruytte v Department of Corrections*, 82 Mich App 145, 147; 266 NW2d 482 (1978). Because "significant public policy considerations are involved, the [c]ourt is not controlled by the labels chosen by the plaintiff." *Id.* The gist of plaintiff's complaint, no matter now labeled, is that defendants negligently handled his personal items and/or negligently maintained their premises such that his items stored at the police station were damaged. His action thus sounds in tort.

Id. at *1.

From *Nali* two lessons can be taken. First, simply because a plaintiff pleads on its face a non-traditional tort cause of action does not mean that the substance of the claim does not sound in tort. There may be many causes of action or statutes which at first glance do not sound in tort, but upon careful examination of the substance do plead tortious conduct. See, e.g., *Spruytte v Department of Corrections*, 82 Mich App 145; 266

NW2d 482 (1978) (noting that a bailment may resound in tort); *4041-49 W Maple Condominium Ass'n v Countrywide Home Loans, Inc*, 282 Mich App 452; 768 NW2d 88 (2009), citing *Tate*, 256 Mich App at 660 (holding that a failure to abide by the notice requirements of MCL 559.208(9), which requires a mortgagee to provide notice of foreclosure to the condominium association, "constitutes a civil wrong – a tort- for which a civil action may be instituted in an effort to pursue a legal remedy."). As the *Nali* Court aptly noted, the court must look *behind* the label chosen by the plaintiff in these situations to the true nature of the claim alleged. If that conduct sounds in tort, then governmental immunity applies. *Nali, supra.*

Second, the *Nali* Court's decision illustrates that both bench and bar need guidance from this Court. The *Nali* decision, which was decided a mere two months after the Court of Appeals' decision in this case, reached the complete opposite result on a substantially similar issue. Clearly, the State's intermediate appellate courts are divided and may become even more so as these non-traditional tort causes of action and statutes continue to infiltrate the judicial system. This Court has the opportunity now, before litigants rely on the Court of Appeals' erroneous decision in this case, to clarify that courts must look past the label placed on a claim to determine if the complained-of conduct sounds in tort. Failure to do so will undermine the legislative directive that immunity from tort liability be broadly construed and result in a host of grave consequences.

D. Left to stand, the Court of Appeals' decision will encourage duplicative litigation, place a dramatic strain on this State's judicial resources, and expose governmental parties to a great risk of liability for conduct the Legislature intended to be protected.

This case goes well beyond the parameters of a sheriff's failure to execute a pick-up order. The breadth of areas and governmental parties the Court of Appeals' opinion could reach to, if left uncorrected by this Court, is alarming. MCL 600.1701(c) lists "[a]ll attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner elected or appointed to perform any judicial or ministerial services" as individuals subject to contempt for "any...violation of duty[.]" Accordingly, a coroner's misidentification of a body, a register of deeds' untimely recording a mortgage, and a sheriff's failure to timely execute a personal protection order, could all be cast as contempt under § 1701(c) for "violation of duty." Under the Court of Appeals' opinion, plaintiffs could seek compensatory contempt damages under MCL 600.1721, free from the constraints of the Governmental Tort Liability Act. Exposing governmental parties to such broad-sweeping tort liability thwarts the very purpose for which immunity was created – so that governmental parties "will not be intimidated nor timid in the discharge of their public duties." *Grahovac v Munising Tp*, 263 Mich App 589, 595; 689 NW2d 498 (2004).

When the appellate courts narrow governmental immunity, as the Court of Appeals has done in this case, they open the floodgates of litigation well beyond the Legislature's intent to broadly immunize governmental agencies and actors, subject to

very specific and narrowly-construed exceptions. Absent relief from this Court, the Court of Appeals' opinion provides litigants an additional forum to rehash their grievances. Accordingly, the courts will be flooded with opportunistic litigants hungry for an alternative means to pursue their tort claims. This, in turn, directly affects the fair, efficient, and consistent functioning of our civil justice system.

The negative effect on public defendants cannot be overstated. Public entities, unable to increase prices or alter business practices to account for this increased risk of liability, very likely will be forced to cut funding or curtail important public programs. *Hamed v Wayne County*, 490 Mich 1, 29; 803 NW2d 237 (2011). This is in addition to the already-major cuts local communities throughout the State have had to make to law enforcement and other public programs as a result of cuts to state-funded local revenue sharing. Sam Inglot, *Revenue sharing cuts impact public safety*, The Michigan Messenger (June 10, 2011); Natalie Broda, *Flint financial woes continue*, themichigantimes.com (April 9, 2012); Ethan A. Huff, *Third-world America: Michigan city cuts power, removes street lights due to inability to pay electric bill*, naturalnews.com (November 9, 2011). Amici curiae submit that a governmental agency's financial resources are better spent on beneficial public programs and services like libraries, street lights, and public safety, rather than on satisfying tort judgments the Legislature intended to eliminate through enactment of MCL 691.1401, *et seq.*

This case is ripe for this Court's review. It presents an issue of first impression, involves legal principles of major significance to the state's jurisprudence, and is of significant public interest. MCR 7.302(B). Review of this case need not result in a decision that will negatively affect the courts' power to punish for contempt. Courts will always retain the "power to punish by fine or imprisonment" – a power the Legislature expressly conferred upon the judiciary through enactment of MCL 600.1701, *et seq.* The boundary between a court's exercise of its contempt power and the scope of immunity is important and review and a decision will allow this Court to read briefing from the parties and amici, to hear arguments, to confer, and then issue a decision giving guidance to the bench and bar.

Unless this Court grants leave to appeal, both bench and bar alike will be forced to rely on the Court of Appeals' published opinion, under which a claimant can avoid tort immunity by labeling the cause of action as one for contempt. This disrupts the carefully-crafted balance the Legislature sought to achieve – and this Court has sought to preserve –through enactment of MCL 691.1401, *et seq.*

RELIEF

WHEREFORE, Amicus Curiae Michigan Municipal League, Michigan Municipal League Liability and Property Pool, Michigan Townships Association, and the Public Corporation Law Section respectfully request this Court to peremptorily reverse the Court of Appeals' holding, or alternatively, grant Respondent-Appellant's application for leave to appeal.

Respectfully submitted,

PLUNKETT COONEY

BY: _____

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DATED: June 14, 2012

EXHIBIT A

Not Reported in N.W.2d, 2012 WL 1758788 (Mich.App.)
(Cite as: 2012 WL 1758788 (Mich.App.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.
Frank **NALI**, Plaintiff–Appellant,
v.
CITY OF GROSSE POINTE WOODS, Anthony Chalut and James Lafer, Defendants–Appellees.

Docket No. 304019.
May 17, 2012.

Wayne Circuit Court; LC No. 10–007655–CZ.

Before: SERVITTO, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

*1 Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. Because plaintiff's claim is barred by governmental immunity, we affirm.

City of Grosse Pointe Woods police officers, including the two named defendants, executed a search warrant at plaintiff's home in 2002 as part of an investigation. Certain items of plaintiff's personal property were seized and plaintiff was ultimately convicted of extortion. His conviction was eventually overturned and plaintiff thereafter sought to have his personal items returned to him. According to plaintiff, some of the seized items were damaged due to two separate floods that occurred within the property room of the police department and at least two items were not returned to him. Plaintiff thus initiated the instant action alleging negligence on the part of defendants. At the close of discovery, defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), which the trial court granted in their favor.

This Court reviews a trial court's grant of summary disposition de novo. *Blue Harvest, Inc. v. DOT*, 288 Mich.App 267, 271; 792 NW2d 798 (2010). Under MCR 2.116(C)(7), the moving party is entitled to summary disposition if the plaintiff's claims are barred by governmental immunity. *Id.* The moving party may support its motion for summary disposition under MCR 2.116(C)(7) with "affidavits, depositions, admissions, or other documentary evidence," provided that the evidence would be admissible at trial. *Odom v. Wayne County*, 482 Mich. 459, 466; 760 NW2d 217 (2008) (quoting *Maiden v. Rozwood*, 461 Mich. 109, 119; 597 NW2d 817 (1999)). This Court accepts the contents of the complaint as true unless contradicted by the evidence provided. *Id.*

This Court also reviews issues of statutory interpretation de novo. *Chandler v. County of Muskegon*, 467 Mich. 315, 319; 652 NW2d 224 (2002). "When interpreting statutory language, [this Court's] obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Id.*

Plaintiff first argues that defendants had a duty to protect plaintiff's property because they seized plaintiff's property for an investigation, that a bailment arose under the circumstances, and that governmental immunity does not apply to bailments. We agree that defendants had a duty to maintain plaintiff's property, but hold that governmental immunity applies to this claim.

Plaintiff essentially argues that government immunity does not apply to his claim because he alleged the breach of a bailment contract, rather than a tort. We would not dispute that in general, the police have a duty to maintain property seized during an investigation. However, even if plaintiff were able to show a bailment this Court does not look to the label chosen by plaintiff to determine the sub-

stance of the complaint and, in turn, whether governmental immunity applies. See, *Spruytte v. Department of Corrections*, 82 Mich.App 145, 147; 266 NW2d 482 (1978). Because "significant public policy considerations are involved, the [c]ourt is not controlled by the labels chosen by the plaintiff." *Id.* The gist of plaintiff's complaint, no matter how labeled, is that defendants negligently handled his personal items and/or negligently maintained their premises such that his items stored at the police station were damaged. His action thus sounds in tort.

***2** MCL 691.1407(1) provides, "[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." This Court's determination of whether governmental immunity applies only depends, then, on whether the governmental agency was engaged in a "governmental function." *Russell v. Department of Corrections*, 234 Mich.App 135, 137; 592 NW2d 125 (1999); *Spruytte*, 82 Mich.App at 147; MCL 691.1407(1). The parties do not dispute that the police department is a governmental agency, that a police investigation constitutes carrying out a governmental function, or that defendants seized plaintiff's property under these conditions. Governmental immunity, therefore, applies to plaintiff's claim.

Plaintiff next argues that he has presented a question of fact regarding whether Officer Chalut's and Lafer's actions amounted to gross negligence that was the proximate cause of his property damage, such that they were not entitled to governmental immunity. We disagree.

We first note that plaintiff failed to plead facts in his complaint showing that governmental immunity does not apply, which is fatal to his claims against the defendant governmental entity, City of Grosse Pointe Woods. *Odom*, 482 Mich. at 478–479 ("A plaintiff filing suit against a governmental agency must initially plead his claims in avoidance of governmental immunity. Placing this burden on the plaintiff relieves the government of the expense of discovery and trial in many cases."). "A plaintiff pleads in avoidance of governmental immunity by stating a claim that fits within a statutory exception or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function." *Mack v. City of Detroit*, 467 Mich. 186, 204; 649 NW2d 47 (2002). Because plaintiff did neither, all of his claims against the City necessarily fail.

With respect to Officers Chalut and Lafer, they are employees of governmental agencies and are entitled to immunity from tort liability for injury to a person or damage to property, so long as: (1) the employee reasonably believed he or she was acting within the scope of his or her authority, (2) the governmental agency is engaged in a governmental function, and (3) the employee's conduct did not amount to gross negligence that is the proximate cause of the injury or damage. *Stanton v. City of Battle Creek*, 466 Mich. 611, 619–620; 647 NW2d 508 (2002); MCL 691.1407(2). "Gross negligence" means "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). "The" proximate cause of an injury for purposes of MCL 691.1407(2) is the "one most immediate, efficient, and direct cause preceding an injury, not 'a proximate cause.' " *Robinson v. City of Detroit*, 462 Mich. 439, 445–446; 613 NW2d 307 (2000). "Evidence of ordinary negligence does not create a material question of fact concerning the gross negligence necessary to overcome a defense of governmental immunity." *Maiden*, 461 Mich. at 122–123.

***3** Plaintiff only disputes the third element applicable to immunity, claiming that the officers' conduct amounted to gross negligence. Plaintiff's claim fails on several grounds. First, plaintiff only plead ordinary negligence. Additionally, as defendants note, plaintiff did not allege in his complaint that any exception to governmental immunity applies with respect to the governmental agency, *or* its employees. Second, plaintiff has failed to show

which flood caused the damage. According to defendants, the first flood was caused by an outdoor storm sewer drain back-up, presumably outside defendants' control, which allowed water to enter their building. The second flood was caused by a burst water pipe inside the building. Plaintiff may not rely on speculation regarding what caused his alleged damages. Third, plaintiff alleges that certain items of his property were missing, such as the hard drive from the computer that was returned to him. However, defendants presented the inventory log showing that all the property was returned, and plaintiff has not presented evidence to refute this point. Plaintiff admitted at his deposition that he simply threw the computer away and did not provide defendants or anyone else the opportunity to inspect the computer to determine if the hard drive was, in fact, missing. Because plaintiff may not rely on mere allegations if disputed by record evidence, he has failed to show that the computer was returned without the hard drive.

Finally, plaintiff has failed to show that Officer Chalut's and Lafer's actions were "the" proximate cause of his damages, i.e., the most efficient, direct cause of plaintiff's damages. Defendants have admitted that two floods occurred in the police property room, but have also provided testimony that the floods were caused by ordinary problems associated with older buildings. No reasonable trier of fact could find that defendants were the proximate cause of the first flood, which was caused by the overflow of a storm drain, located outside of the building. Likewise, whether the second flood was caused by the bursting of a water pipe or a steam release valve, Officers Chalut and Lafer cannot be said to have been the proximate cause of this event. Plaintiff has not provided any evidence whatsoever that the officers' ordinary, let alone gross negligence caused or allowed a storm sewer located outside the building to back up or a pipe inside the building to burst. Plaintiff failed to establish that either of these occurrences happened before, or that defendants knew or had reason to know that the pipe would cause a flood. This claim, therefore, fails.

Plaintiff next argues that the trial court erred in finding that the public building exception to governmental immunity does not apply to the facts of this case. We disagree.

"The public building exception applies to public buildings open for use by members of the public and makes governmental agencies liable for injuries sustained for defects or dangerous conditions of a building if an agency failed to remedy such a condition or take action necessary to protect the public against it." *Kerbersky v. Northern Mich. Univ.*, 458 Mich. 525, 533; 582 NW2d 828 (1998) (citing MCL 691.1406) "[F]or a plaintiff to avoid governmental immunity under the public building exception, the plaintiff must prove that (1) a governmental agency is involved, (2) the public building in question is open for use by members of the public, (3) a dangerous or defective condition of the public building itself exists, (4) the governmental agency had actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable amount of time." *Renny v. Dept. of Trans.*, 478 Mich. 490, 495–496; 734 NW2d 518 (2007).

***4** Defendants concede that a government agency is involved in this case. However, plaintiff has failed to show that the building in question should be considered open to use by members of the public at the time of the damage to his property. "Because the statutory language limits the exception to periods when the building is open for use by members of the public, accidents that occur when the building is closed to the public do not fall within the confines of the exception, and the government is entitled to immunity." *Maskery v. Bd. of Regents*, 468 Mich. 609, 619–620; 664 NW2d 165 (2003). Plaintiff failed to depose any witnesses or present any other evidence regarding when the damage to his property occurred. Plaintiff, therefore, failed to meet his burden to produce evidence sufficient to find that this exception applies.

Plaintiff also failed to show that the floods occurred as a result of a dangerous or defective condition in the building. Again, the first flood occurred as a result of a storm drain overflow that occurred outside of the building, but caused water to flow into the building. This flood, therefore, occurred as a result of a condition outside the building. The second flood occurred as a result of a burst water pipe. Although the water pipe burst, plaintiff has failed to show that the burst occurred because of a dangerous condition, and the mere fact that damage occurred is insufficient to establish this fact. *Skinner v. Square D. Co.*, 445 Mich. 153, 163; 516 NW2d 475 (1994) ("... the mere happening of an unwitnessed mishap neither eliminates nor reduces a plaintiff's duty to effectively demonstrate causation...."). Additionally, to the extent that plaintiff's argument may be construed as stating that a design defect caused the damage, it fails because "[MCL 691.1406] clearly does not support a design defect claim." *Renny*, 478 Mich. at 500. Plaintiff has thus failed to establish that the cause of his injury was a dangerous condition in the building. Lastly, plaintiff failed to show that the governmental agency had actual or constructive knowledge of the alleged defect or that it failed to correct the defect in a reasonable time. Again, plaintiff simply failed to depose any witnesses or present any other record evidence supporting this element. Plaintiff's claim, therefore, must fail.

Plaintiff next argues that defendants waived their right to assert governmental immunity by purchasing indemnity insurance. We disagree.

MCL 691.1409 states:

> (2) The existence of an insurance policy indemnifying a governmental agency against liability for damages is not a waiver of a defense otherwise available to the governmental agency in the defense of the claim.

This statute explicitly and unambiguously allows a governmental agency to purchase indemnity insurance without waiving its right to assert defenses. As this Court stated in previously rejecting this argument, "... defendant did not waive any immunity by the purchase of liability insurance because the statute says so in language so clear and unequivocal that discussion is not warranted." *Pichette v. Manistique Public Schools*, 50 Mich.App 770, 775; 213 NW2d 784 (1973), rev'd on other grounds 403 Mich. 268 (1978). We therefore reject this argument.

***5** Plaintiff finally argues that, although not part of the statute, this Court should recognize an exception to governmental immunity based on public policy. We find no merit to his argument. There are six statutory exceptions to governmental immunity, and public policy is not included among them. Further, exceptions to governmental immunity are narrowly construed. *Maskery v. Univ. of Mich. Bd. of Regents*, 468 Mich. at 614. To accept a nonstatutory exception would amount to a judicial expansion of the exceptions, creating such a cause of action would contravene the govermental tort liability act. We therefore refuse plaintiff's invitation to create a judicial exception to governmental immunity.

Affirmed.

Mich.App.,2012.
Nali v. City of Grosse Pointe Woods
Not Reported in N.W.2d, 2012 WL 1758788 (Mich.App.)

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STATE OF MICHIGAN

IN THE SUPREME COURT

(ON APPEAL FROM THE MICHIGAN COURT OF APPEALS)

ESTATE OF STEPHEN BRADLEY, Deceased, by NANCY MICK, Personal Representative,

Petitioner-Appellee,

v

KENT COUNTY SHERIFF'S DEPARTMENT,

Respondent-Appellant. /

Supreme Court No. 145055

Court of Appeals No. 299640

Lower Court No. 09-001348-AV

PROOF OF SERVICE

Deanna Nagy, states that on June 14, 2012, a copy of Brief of Amicus Curiae Michigan Municipal League, Michigan Municipal League Liability & Property Pool, Michigan Townships Association, and the Public Corporation Law Section and Proof of Service, was served on:

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by depositing same in the United States Mail with postage fully prepaid.

Deanna Nagy

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