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ADVANCE SHEET HEADNOTE
February 5, 2024

2024 CO 7

No. 22SC632, *Cnty. of Jefferson v. Stickle*—Colorado Governmental Immunity Act—Sovereign Immunity—Building—Design—Dangerous Condition.

The supreme court holds that Beverly Stickle's suit for damages sustained from an accident at the parking structure adjacent to the Jefferson County Courts and Administration Building may proceed and the County is not immune from suit. First, the court holds that the parking structure falls under the plain meaning of a "building" as the word is used in the Colorado Governmental Immunity Act. Second, the court concludes that the dangerous condition that led to Stickle's accident was not attributable solely to the design of the parking structure. The County is therefore not immune from suit.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 7

Supreme Court Case No. 22SC632
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA439

Petitioner:

County of Jefferson,

v.

Respondent:

Beverly Stickle.

Judgment Affirmed
en banc
February 5, 2024

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JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HART delivered the Opinion of the Court.

¶1 Beverly Stickle lost her balance and fell when she stepped down from a walkway to the parking lot surface at a parking structure adjacent to the Jefferson County Courts and Administration Building. She broke her arm and subsequently sued Jefferson County ("the County") for damages sustained from the accident. The County moved to dismiss, arguing that it was immune from suit under the Colorado Governmental Immunity Act ("CGIA") because (1) the parking structure is not a "building" and (2) the condition that Stickle alleges caused her injury was solely the consequence of the parking lot's "design." If either of these arguments were successful, the County would indeed be immune from suit. However, we conclude that the parking structure at issue is a building as that word is used in the CGIA and that the dangerous condition that Stickle alleges caused her fall is not attributable solely to the design of the parking structure. Accordingly, the County is not immune from suit, and Stickle's claim may proceed.

I. Facts and Procedural History

¶2 In February 2018, Stickle parked her car on the upper level of the North Parking Structure at the Jefferson County Courts and Administration Building and entered the building to conduct business with a County agency. As she returned to her car, Stickle fell while stepping down from a walkway onto the surface of the parking area and suffered a compound fracture of her arm. She sued the County

under the Colorado Premises Liability Act, § 13-21-115, C.R.S. (2023), claiming that the curb was poorly marked and thus constituted a dangerous condition that caused her injury. In bringing her suit, Stickle asserted that the County was not immune from her claim because the parking structure is a "public building" under section 24-10-106(1)(c), C.R.S. (2023), and the CGIA waives immunity for dangerous conditions of public buildings when caused by construction or maintenance rather than solely by the design of the building. § 24-10-103(1.3), C.R.S. (2023). The County moved to dismiss for lack of subject matter jurisdiction, arguing that (1) the parking structure is not a building, and (2) the lot surface's coloring was a "design" choice rather than a feature of construction or maintenance and therefore did not constitute a "dangerous condition" within the meaning of the CGIA.

¶3 The district court held a hearing pursuant to *Trinity Broadcasting of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 923–24 (Colo. 1993), to determine whether the County waived its immunity. Following that hearing, the court denied the County's motion to dismiss. The court found that the parking structure was a "building," reasoning that (1) the structure "is made of concrete or masonry materials and is permanent"; (2) the lower level "is surrounded by walls and appears to consist of permanent support columns"; and (3) the structure has electricity, lighting, and a fire suppression system. The court further found that

"the surface of the walkway and the driving surface" created an optical illusion because they were "finished with the same color." This mirage, according to the court, constituted a dangerous condition. Thus, the trial court found that the County had waived its immunity under the CGIA.

¶4 The County filed an interlocutory appeal, and a division of the court of appeals affirmed. *Stickle v. Cnty. of Jefferson*, 2022 COA 79, ¶ 42, 519 P.3d 751, 762. First, the division agreed with the district court that the parking structure was a building. *Id.* at ¶ 28, 519 P.3d at 760. Additionally, the division rejected the County's argument that the curb illusion was solely a design choice. *Id.* at ¶ 39, 519 P.3d at 761–62. Instead, the division concluded that the illusion of uniformity between the walkway and the parking surface "resulted from maintenance, at least in part." *Id.* Accordingly, the division concluded that the County was not immune from suit. *Id.* at ¶ 41, 519 P.3d at 762.

¶5 The County petitioned this court for certiorari review, and we granted the petition.[1]

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[1] We granted certiorari to review the following issues:

1. Whether a two-story parking lot located adjacent to the Jefferson County Courts and Administration Building is a building for purposes of the dangerous condition of a public building waiver in section 24-10-106(1)(c), C.R.S. (2022), of the Colorado

II. Analysis

¶6 We begin by setting out the relevant provisions of the CGIA, as well as the standards of review that apply to an appellate court's review of an immunity claim. We then proceed to consider whether the County parking structure is a building within the meaning of the CGIA and conclude that it is. Next, we evaluate whether the condition that allegedly led to Stickle's fall—coloring of the parking lot surface in a manner that created an optical illusion of a flat surface—was attributable solely to the design of the facility. Here, we conclude that the parking lot surfacing was not solely a design decision but was at least, in part, an aspect of the maintenance of the facility. For these reasons, we affirm the division and remand the case to permit Stickle's claim to proceed.

III. The CGIA and Standards of Review

¶7 The CGIA immunizes public entities from "liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant." § 24-10-106(1). This immunity may, however, be waived under specific circumstances, including in "an action for

Governmental Immunity Act, codified at sections 24-10-101 to -102, C.R.S. (2022).

2. Whether the County's use of the same material for the parking lot's walking and driving/parking surfaces was a design issue for purposes of the dangerous condition analysis, entitling the County to immunity.

injuries resulting from . . . [a] dangerous condition of any public building." § 24-10-106(1) to (1)(c).

¶8 The statute in turn defines a "[d]angerous condition" to include:

> a physical condition of a facility . . . that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the [negligence] . . . of the public entity or public employee in constructing or maintaining such facility.

§ 24-10-103(1.3).

¶9 However, "[a] dangerous condition shall not exist solely because the design of any facility is inadequate." *Id.*

¶10 Whether the CGIA applies to shield the government from suit is a question of subject matter jurisdiction and is governed by C.R.C.P. 12(b)(1)'s standard for dismissal. *Maphis v. City of Boulder*, 2022 CO 10, ¶ 13, 504 P.3d 287, 291. Pursuant to this standard, the plaintiff carries the burden of proof to show that the government waived its immunity. *City & Cnty. of Denver v. Dennis*, 2018 CO 37, ¶ 11, 418 P.3d 489, 494. In the CGIA context, however, this burden is relatively lenient "as the plaintiff is afforded the reasonable inferences from [their] undisputed evidence." *Id.* Because the CGIA derogates from the common law, the court must "strictly construe the statute's immunity provisions." *Springer v. City & Cnty. of Denver*, 13 P.3d 794, 798 (Colo. 2000). At the same time, we "broadly construe" the statute's waiver provisions. *Id.*

¶11 In so doing, we apply our standard rules of statutory interpretation. We aim to effectuate the legislature's intent, looking first to the language of the statute to ascertain its meaning. *Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 9, 529 P.3d 105, 107. If the language is clear and unambiguous, we apply it as written. *Delta Air Lines, Inc. v. Scholle*, 2021 CO 20, ¶ 13, 484 P.3d 695, 699. When statutory language is ambiguous—that is, reasonably susceptible to multiple interpretations—we may look to other interpretive aids to discern the legislature's intent. *See, e.g.*, *Colo. Oil & Gas Conservation Comm'n v. Martinez*, 2019 CO 3, ¶ 19, 433 P.3d 22, 28.

A. Jefferson County's Parking Structure Is a Building

¶12 The parking structure where Stickle was injured is a permanent two-level structure made of concrete and masonry materials. The lower level is not entirely enclosed but has a knee-high wall surrounding it with support columns at regular intervals. It does not have heating, ventilation, or air conditioning ("HVAC"), but it does have electricity, lighting, and a fire suppression system.

¶13 The County argues that the parking structure is not a "building" as that term is used in the CGIA. In particular, the County argues that the structure cannot be a building because it has no HVAC or other features that many buildings have; it is not fully enclosed; and it is, in essence, one parking lot stacked on top of another.

While each of these descriptors is accurate, they are not enough to counter the aspects of the structure that fit the definition of a building.

¶14 The CGIA does not itself define "building," so we must look to other sources for assistance. Merriam-Webster defines "building" as "a *usually* roofed and walled structure built for permanent use (as for a dwelling)." *Building*, Merriam-Webster Dictionary (emphasis added), https://www.merriam-webster.com/dictionary/building [https://perma.cc/UG2J-HQVG]. The only time this court has defined "building" was in the context of interpreting the burglary statute, where we reached a very similar definition. In *Sanchez v. People*, 349 P.2d 561, 562 (Colo. 1960), this court held that "all stationary structures within Colorado, no matter of what substance they may be constructed, are within the term building, so long as they are designed for use in the position in which they are fixed." Importantly, we did not "limit[] the definition of a building to a structure with walls and a roof"; rather, we defined a building as a "structure which has a capacity to contain, and is designed for the habitation of man or animals, or the sheltering of property." *Id.*

¶15 We consider these definitions in light of our obligation to construe CGIA waivers broadly and conclude that the legislature intended a parking structure like this one to be a building. The parking structure is designed for "permanent use" and "for use in the position in which [it is] fixed." *Id.* It has electricity for

lighting and vehicle charging and a sprinkler system; the lower level is completely covered and is enclosed by a knee-high wall; and the entire structure is designed to store property (vehicles). True, cars parked on the upper level of the parking structure are not sheltered from the elements, but neither is a rooftop garden nor an HVAC system located on top of a home or office building.

¶16 Accordingly, we affirm the court of appeals' decision that the County's parking structure falls under the ordinary definition of a "building." Because we have determined that the parking structure is a building, we turn to whether the curb's paint created a dangerous condition.

B. The Curb's Paint Was Not "Solely" Attributable to Design

¶17 The CGIA waives governmental immunity for the "dangerous condition" of a building caused by negligent "maintenance" or "construction," but does not waive immunity if the condition exists "solely because the design of any facility is inadequate." § 24-10-103(1.3). Here, the County asserts that the choice of surfacing material, including its color, was part of the parking structure's design. Stickle, on the other hand, argues that the illusion that caused the walkway and parking surface to appear as a single flat surface was the result of negligent maintenance.[2]

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[2] Neither party argues that negligent construction caused Stickle's fall, and the record does not suggest otherwise. We therefore confine our discussion to maintenance and design.

¶18 The County argues that the material and color choices that led to the optical illusion of a flat surface were part of a new design—specifically of a project to resurface the lot. They note that we have held that "design" means to "conceive or plan out," *Swieckowski ex rel. Swieckowski v. City of Fort Collins*, 934 P.2d 1380, 1386 (Colo. 1997), and they explain that the particular choice of materials used to resurface the lot was "conceived" as part of the resurfacing plan.

¶19 The record belies the assertion that the resurfacing was solely a design decision. In 2017, the County adopted a five-year "Major Maintenance Repair and Replacement" plan. Part of this plan was a "resurfacing project" that involved adding new topping material to the walkway and parking surface. One of the purposes for applying this material was "to prevent water, mag chloride[,] and salt from infiltrating into the concrete because those substances will degrade the rebar . . . and the concrete itself." Thus, the new topping material was supposed to help preserve the facility from decline, a purpose that falls squarely within the CGIA's definition of maintenance. *See* § 24-10-103(2.5).

¶20 However, the County asserts that, whatever its maintenance benefits, this particular element of the maintenance plan—the decision to make the walkway and the parking surface the same color—was a design decision. Accepting that assertion as true, we nonetheless conclude that immunity is waived here. We agree with the division that the dangerous condition—the optical illusion created

by the surface coloring—resulted at least in part from maintenance of the facility. "Maintenance" is defined in the statute as "the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or efficiency as initially constructed or in preserving a facility from decline or failure." § 24-10-103(2.5). We have explained that it "encompasses ongoing repair and upkeep of the facility." *Padilla ex rel. Padilla v. Sch. Dist. No. 1*, 25 P.3d 1176, 1182 (Colo. 2001). Even accepting the County's position that the resurfacing with the same materials was a design decision, the decision was part of a broader maintenance process. The CGIA, and our caselaw interpreting it, has been clear that "it is only when the dangerous condition is *solely* attributable to design that the [government] is immune." *Medina v. State*, 35 P.3d 443, 459 (Colo. 2001) (emphasis added). Under the circumstances presented here, we cannot conclude that the dangerous condition was *solely* attributable to design choices.

IV. Conclusion

Under the circumstances presented here, the County has waived its immunity from suit. The parking structure in which Stickle was injured is a building as defined by the CGIA and the conditions of the facility that allegedly caused her injuries were the result, at least in part, of maintenance of that structure. Accordingly, Stickle may proceed with her suit against the County.