

STATE OF MICHIGAN  
COURT OF APPEALS

---

CHIMEATIA CURTIS,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

---

UNPUBLISHED

June 25, 2013

No. 308970

Wayne Circuit Court

LC No. 10-008188-NO

Before: STEPHENS, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendant appeals from an order of the circuit court denying its motion for summary disposition. We affirm.

Plaintiff alleges that she tripped and fell on a defective sidewalk at the Cass Avenue overpass of the I-75 Highway in Detroit, Michigan. As a result, plaintiff suffered a fractured hind foot and other injuries that required medical attention and therapy. Plaintiff sent defendant notice of her injury and her intent to sue for damages. Plaintiff's notice described the location of the incident in two ways. First, the notice referenced the location in the subject line, written as: "Location of Incident: Cass Avenue Overpass of I-75 Freeway, Detroit, MI 48211." Second, plaintiff attached photographs of the area surrounding the location.

Plaintiff filed her complaint, arguing the defective-highway exception to governmental immunity because defendant failed to repair and maintain the sidewalk. Defendant subsequently filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(10), claiming that the 120-day notice pursuant to MCL 691.1404 was legally insufficient because plaintiff failed to provide defendant with an exact location of her injury. The trial court denied defendant's motion for summary disposition, stating, in relevant part: "You had a panoramic view of the area and – and then kind of zeroed in on where the – where the incident occurred. So I think it's sufficient. I'll deny the motion." Defendant now appeals.

Defendant's only argument on appeal is that the trial court erred in denying its motion for summary disposition because there is no genuine issue of material fact that plaintiff failed to comply with the notice requirement of MCL 691.1404(1). We disagree. This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007). This Court also reviews de novo the proper interpretation of a statute. *Plunkett v Dep't of Transp*, 286 Mich App 168, 174;

779 NW2d 263 (2009). “When the language is unambiguous, we give the words their plain meaning and apply the statute as written. *In re MCI Telecom Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999).

Summary disposition is appropriate under MCR 2.116(C)(7) when “a claim is barred by immunity granted by law and requires consideration of all documentary evidence filed or submitted by the parties.” *Burise v City of Pontiac*, 282 Mich App 646, 650; 766 NW2d 311 (2009). In its review, this Court must give consideration to the “affidavits, depositions, admissions, and other documentary evidence filed by the parties,” and determine whether plaintiff gave proper notice. *Poppen v Tovey*, 256 Mich App 351, 354; 664 NW2d 269 (2003). “If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts,” whether plaintiff gave defendant proper notice is a question for the court. *Id.*

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff’s complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court considers “the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” *Id.* A motion pursuant to MCR 2.116(C)(10) is properly granted if “there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law.” *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Defendant raises only the issues of exact location and nature of the defect. Defendant argues that plaintiff failed to provide defendant notice where her 120-day notice (1) indicated that plaintiff fell at the southeast corner of the intersection when she actually fell at the northeast corner, approximately 58 feet away and (2) failed to state specifically what was defective about the sidewalk. In making this argument, defendant maintains that plaintiff failed to attach a picture of the northeast corner of the intersection to her notice and as a result, defendant was unable to locate the exact location of plaintiff’s injury until two and a half years later when defendant took plaintiff’s deposition. Plaintiff maintains that 15 pictures, including pictures of the northeast corner, were attached to her notice to provide defendant with an exact location of her injury.

While the parties disagree over exactly how many, and which, photographs were attached to plaintiff’s notice letter, the trial court concluded the photographs received by defendant “zeroed in on” the relevant area. We certainly have no basis to disagree with the trial court’s conclusion. It must be kept in mind that the main purpose of the notice requirement is to give the governmental agency the opportunity to investigate the claim and to fix the defect. *Plunkett*, 286 Mich App at 176-177. And in the case at bar, the affidavit submitted by defendant’s investigator confirmed that he was able to find the location where plaintiff fell and conduct an inspection. Therefore, the notice served its purpose and we agree with the trial court that it was sufficient.

Affirmed. Plaintiff may tax costs.

/s/ Cynthia Diane Stephens  
/s/ David H. Sawyer  
/s/ Patrick M. Meter