STATE OF MICHIGAN

COURT OF APPEALS

KENT TERRY and CAROLYN TERRY,

Plaintiffs-Appellants/
Cross-Appellees,

v

TRENTON FEDERAL CREDIT UNION,

Defendant-Appellee/
Cross-Appellant,

and

CITY OF TRENTON,

Defendant.

UNPUBLISHED
February 2, 1999

No. 201681
Wayne Circuit Court
LC No. 95-516520 NO

Before: Sawyer, P.J., and Bandstra and R. B. Burns*, JJ.

PER CURIAM.

Plaintiffs appeal from an order dismissing with prejudice this slip and fall action. We affirm.

Plaintiffs' first issue on appeal is that summary disposition was improperly granted in favor of defendant Trenton Federal Credit Union (hereinafter defendant Credit Union), because it had a servitude for its private benefit in the sidewalk owned by defendant City of Trenton (hereinafter defendant Trenton), and therefore, had a duty to eliminate the dangerous condition presented by the sidewalk. We disagree.

On appeal, an order granting or denying a motion for summary disposition is reviewed de novo. *Walters v Bloomfield Hills Furniture*, 228 Mich App 160, 162; 577 NW2d 206 (1998). A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. *First Security Savings Bank v Aitken*, 226 Mich App 291, 304; 573 NW2d 307 (1997). In ruling on the motion,

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

the trial court must consider the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence submitted by the parties. *Id*. Giving the benefit of all reasonable doubt to the opposing party, the trial court must determine whether a record might be developed that would leave open an issue of material fact upon which reasonable minds could differ. *Id*. The moving party must specifically identify the issues on which there are no disputed facts, and that party also must support its position with affidavits, depositions, or other documentary evidence. *Munson Medical Center v Auto Club Ins Ass'n*, 218 Mich App 375, 386; 554 NW2d 49 (1996). The opposing party then bears the burden of showing by evidentiary materials that a dispute exists regarding a genuine issue of material fact. *Id*. A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact. *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995).

Plaintiffs argue that defendant Credit Union had a servitude for its private benefit in the service walk upon which plaintiff Kent Terry slipped and fell. In the present case, the service walk in front of defendant Credit Union's place of business could be used by any person, regardless of whether or not they were going to defendant Credit Union's place of business. Therefore, defendant Credit Union did not have a servitude for its private benefit, and as such, did not owe a duty to plaintiffs to maintain the service walk. See *Berman v LaRose*, 16 Mich App 55, 58; 167 NW2d 471 (1969). Since a prima facie case of negligence requires that a defendant owe a plaintiff a duty, *Terry v City of Detroit*, 226 Mich App 418, 424; 573 NW2d 348 (1997), summary disposition was properly granted.

Plaintiffs' second issue on appeal is that a genuine issue of material fact existed regarding whether defendant Credit Union installed the service walk, thereby making summary disposition inappropriate. We disagree.

In order to show that a genuine issue of material fact existed, plaintiffs rely on numerous items. Plaintiffs first offer the deposition testimony of George Evans, a neighbor of defendant Credit Union since 1973. In his deposition, Evans states that he remembers the service walk being installed within a matter of months after the street was installed. Plaintiffs then state that, from this evidence, it can be inferred that the service walk was installed when defendant Credit Union was the only occupier of the adjacent property; however, plaintiffs cite no evidence in support of this statement. Plaintiffs then assert that the only parties that had a motive or opportunity to install the service walk were either defendant Trenton or defendant Credit Union. Again, plaintiffs cite no part of the lower court record in support of this statement. Plaintiffs argue that defendant Trenton could not have been the party that installed the service walk. In support of this argument, plaintiffs rely on defendant Trenton's answer to an interrogatory. Defendant Trenton was asked if they had ever "installed concrete walkway approaches between the street and sidewalk for ingress and egress to the abutting property." Defendant Trenton responded that they had not installed such concrete walkway approaches.

Plaintiffs have not met their burden of proof because they have offered nothing more than speculation and conjecture to support their conclusion that defendant Credit Union installed the service walk. Although circumstantial evidence is sufficient to establish a cause of action, speculation and conjecture are not. *Libralter Plastics Inc v Chubb Group of Insurance Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Accordingly, plaintiff's contention is without merit.

Because we affirm the trial court's ruling, defendant Credit Union's issues on cross-appeal need not be addressed.

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Robert B. Burns