

STATE OF MICHIGAN
COURT OF APPEALS

FERN JONES,

Plaintiff-Appellant,

v

GEORGETOWN TOWNSHIP,

Defendant-Appellee,

and

RICHARD BEERENS, a/k/a RICHARD
BERRENS,

Defendant-Not Participating.

UNPUBLISHED

May 28, 1999

No. 204721

Ottawa Circuit Court

LC No. 96-025195 NO

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was walking on a sidewalk in Georgetown Township when she fell to the ground and sustained injuries. She filed suit alleging that defendant failed to maintain the sidewalk in a state of reasonable repair so as to be reasonably safe and convenient for public travel, as required by MCL 691.1402(1); MSA 3.996(102)(1).

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff could not establish a causal link between her injuries and any breach of duty, because she acknowledged that she did not know the cause of her fall. In response, plaintiff stated that the statement of an unidentified witness who said that she saw plaintiff trip, coupled with the presence of blood on the sidewalk where she fell, created an issue of fact regarding causation.

The trial court granted summary disposition in favor of defendant. The trial court stated that even assuming that the witness's statement would be admissible at trial, that statement, along with the evidence as to the location of the blood, would be insufficient to allow a jury to conclude that it was more likely than not that plaintiff tripped on a defect in the sidewalk. We review de novo a trial court's decision on a motion for summary disposition. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Generally, a governmental agency is immune from tort liability where it is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1); MSA 3.996(107)(1). An exception exists with regard to highways. A governmental agency must maintain a highway in reasonable repair so that it is reasonably safe and convenient for public travel. MCL 691.1402(1); MSA 3.996(102)(1). A sidewalk is included in the definition of "highway." MCL 691.1401(e); MSA 3.996(101)(e). A municipality must maintain sidewalks in reasonable repair. *Glancy v Roseville*, 457 Mich 580, 584; 577 NW2d 897 (1998).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

Plaintiff argues that the trial court erred in granting summary disposition. We disagree and affirm. Plaintiff did not remember falling, and did not know the cause of her fall. She could not testify that she fell because she tripped on a defect in the sidewalk. Similarly, neither the statement of the witness who indicated that she saw plaintiff trip, nor the presence of what plaintiff assumed was blood on the sidewalk, established that plaintiff tripped on a defect in the sidewalk. To establish causation, a claimant must prove that it is more likely than not that but for the defendant's breach of duty, the injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994). Here, the possibility that a breach of duty by defendant might have caused plaintiff to fall and sustain injuries is not sufficient to establish the required causation. It is equally possible that plaintiff tripped over her own feet. A jury would be required to engage in speculation and conjecture in order to infer that a breach of duty by defendant caused plaintiff's injuries. To base a case of negligence on inferences under such circumstances is prohibited. *Ritter, supra*. The trial court properly decided the issue as one of law and granted summary disposition in favor of defendant. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Richard Allen Griffin
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald