STATE OF MICHIGAN

COURT OF APPEALS

VALERIA HALIW and ILKO HALIW,

Plaintiffs-Appellees,

v

CITY OF STERLING HEIGHTS,

Defendant-Appellant.

UNPUBLISHED
October 5, 1999

No. 206886
Macomb Circuit Court
LC No. 97-000036 NO

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court order denying its motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm.

We review a trial court's decision with regard to a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Summary disposition is proper under MCR 2.116(C)(7) when a claim is barred because of immunity granted by law. The motion should not be granted unless no factual development could provide a basis for recovery. *Huron Potawatomi, Inc v Stinger*, 227 Mich App 127, 130; 574 NW2d 706 (1997). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for the plaintiff's claim. Summary disposition is properly granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Gumma v D & T Construction Co*, 235 Mich App 210, 214; 597 NW2d 207 (1999).

Defendant argues that the trial court erred in denying its motion for summary disposition because plaintiffs' claim is barred by the natural accumulation doctrine. Under the natural accumulation doctrine, a governmental agency does not have an obligation to remove a natural accumulation of ice or snow from a highway. *Skogman v Chippewa Co Rd Comm*, 221 Mich App 351, 353; 561 NW2d 503 (1997). The highway exception to governmental immunity applies to sidewalks. MCL 691.1401(e); MSA 3.996(101)(e).

Defendant's argument fails, however, because plaintiffs do not allege that Valeria Haliw fell because of a natural accumulation of ice and snow. Rather, plaintiffs claim that the fall was caused by

an unnatural accumulation of ice and snow resulting from a depression in the sidewalk. Thus, in addition to the presence of snow and ice, plaintiffs allege that there was a defect in the sidewalk itself, and therefore their claim is not barred by the natural accumulation doctrine. See *Hopson v Detroit*, 235 Mich 248, 250; 209 NW 161 (1926); *Woodworth v Brenner*, 69 Mich App 277, 281; 244 NW2d 446 (1976).

Defendant also asserts that the defect claimed by plaintiffs is insufficient to support the imposition of liability. Plaintiffs submitted the testimony of an expert witness who opined that the sidewalk contained several defects, most notably a depression that caused water to pond in a two- or three-foot square area. Defendant is correct that there is no requirement that streets or sidewalks be completely level. See *Bigelow v Kalamazoo*, 97 Mich 121, 123; 56 NW 339 (1893). Defendant is only required to keep its sidewalks "in reasonable repair so that [they are] reasonably safe and convenient for public travel." MCL 691.1402(1); MSA 3.996(102)(1). However, plaintiffs' expert testified that, where the fall occurred, the condition of two sidewalk slabs created a "trip hazard" that posed a danger to pedestrians and bicyclists. Although defendant disputes the expert's conclusions, a court may not assess credibility or determine facts when considering a motion for summary disposition. *Downey v Charlevoix Co Bd of Co Rd Comm'rs*, 227 Mich App 621, 626; 576 NW2d 712 (1998). Here, plaintiffs presented evidence creating a genuine issue of material fact regarding whether the sidewalk where Valeria Haliw fell was reasonably safe for public travel. Accordingly, the trial court did not err in denying defendant's motion for summary disposition.

Affirmed.

/s/ Jeffrey G. Collins
/s/ David H. Sawyer
/s/ Mark J. Cavanagh