STATE OF MICHIGAN

COURT OF APPEALS

CHARITA CURRY,

Plaintiff-Appellant,

v

WAYNE COUNTY, WAYNE COUNTY SHERIFF and MELVIN TURNER,

Defendants-Appellees.

UNPUBLISHED
January 26, 2001

No. 216842
Wayne Circuit Court
LC No. 97-726385 NZ

Before: Smolenski, P.J., and Holbrook, Jr. and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order granting defendants summary disposition of her claims pursuant to MCR 2.116(C)(7) and (10). Plaintiff's complaint alleged that defendants maintained a defective public building by failing to adequately heat the county jail during her February 1997 incarceration, and that defendants violated her state constitutional due process rights by adhering to a policy of ignoring her requests for medical attention. We affirm.

Plaintiff first contends that summary disposition of her negligence claim against the county was improper because she presented sufficient evidence that a defective public building caused her injuries.[1] We review de novo a trial court's summary disposition ruling. *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999).

In determining whether the plaintiff's claim is barred by governmental immunity, MCL 691.1407; MSA 3.996(107), this Court must consider all documentary evidence, including any pleadings, depositions, admissions or other documentary evidence submitted by the parties. All well pleaded allegations are accepted as true and construed in favor of the nonmoving party. To survive a motion for summary disposition under MCR 2.116(C)(7), a plaintiff must allege facts in the complaint justifying application of an exception to governmental immunity. *Suttles v*

[1] Plaintiff concedes that the trial court correctly granted the sheriff and undersheriff defendants summary disposition because they represent, respectively, an elected and a high appointed official, and no evidence indicates that they acted outside the scope of their authority. MCL 691.1407(5); MSA 3.996(107)(5).

Dep't of Transportation, 457 Mich 635, 642; 578 NW2d 295 (1998); *Dampier v Wayne Co*, 233 Mich App 714, 720-721; 592 NW2d 209 (1999). Application of the narrowly drawn public building exception, MCL 691.1406; MSA 3.996(106), requires a showing that (1) a governmental agency is involved, (2) the public building in question is open for use by members of the public, (3) a dangerous or defective condition of the public building exists, (4) the governmental agency had actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable period. *Steele v Dep't of Corrections*, 215 Mich App 710, 713-714; 546 NW2d 725 (1996).

After reviewing the record, we find that plaintiff failed to present any evidence that a dangerous or defective condition of the jail existed during her incarceration. See *McLean v Univ of Michigan Medical Center*, 192 Mich App 128, 129; 480 NW2d 602 (1991) ("[T]he public building exception to governmental immunity is limited to dangerous or defective conditions in the structure of the building itself resulting from faulty design, construction, repair, or maintenance."). Plaintiff's complaint simply alleged that the jail "had no heat in the dead of winter." The parties do not dispute that plaintiff several times during her stay in jail complained of feeling cold and having numb, painful and swollen feet, or that plaintiff and other inmates were given additional blankets that they used to keep warm. However, the record lacked evidence regarding a specific cause of the inmates' discomfort.[2] Because nothing beyond mere speculation attributes the alleged cold conditions to any jail defect for which defendant county is responsible, we conclude that the trial court properly granted the county summary disposition of plaintiff's negligence claim pursuant to MCR 2.116(C)(7).[3] *Hanley v Mazda Motor Corp*, 239

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[2] According to plaintiff, she experienced cold jail conditions for about one week beginning on approximately February 10 or 11, 1997. The following represents the record testimony concerning the jail's physical condition. A jail maintenance manager explained that a court order required that the jail temperature remain between sixty-eight and eighty-two degrees, and that the temperature was set at seventy-two degrees. A February 3, 1997 temperature report showed that seventy-three degrees was the average temperature in jail level five (floors four through twelve; plaintiff resided on floor five). The maintenance manager did not recall a heating system malfunction since 1993. Undersheriff Melvin Turner recalled once since 1991 that the jail became too hot and once when an area housing male inmates became too cold, but averred that these cold conditions had nothing to do with the heating system and occurred nowhere near the location of plaintiff's 1997 incarceration. The deputy director of the county department of public services, division of building operation and maintenance, knew of no occasion when the jail heating system ever failed to provide heat, and that no emergency heating system repairs occurred during February 1997. Steam fitter Mitch Karaszkjewicz, who was responsible for daily maintenance of jail temperatures, testified that he set the temperature at seventy-two degrees. Karaszkjewicz affirmed the possibilities that the heating system could fail in only one part of the jail and that in February 1997 the jail might have lost steam pressure from Detroit Edison, but did not recall being contacted in February 1997 to correct any jail heating problem. Karaszkjewicz stated that "quite often" "there are times where people complain, and I cannot . . . find anything wrong with the system or with the temperature," and responded affirmatively to the question whether "there's times when you look on this report, it says N[ormal] . . . but there's still a problem in the area."

[3] We note that the trial court incorrectly observed that, regardless that the jail represents a building open to the public, the accessibility of the jail cell area where the allegedly cold

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Mich App 596, 600; 609 NW2d 203 (2000) (noting that in reviewing a (C)(7) motion this Court must consider all available pleadings and evidence to determine whether a genuine issue of material fact exists); *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993) (explaining that "parties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact").

Plaintiff also argues that a factual issue exists whether defendants implemented an unconstitutional custom or policy regarding medical treatment that violated plaintiff's state constitutional rights. Because no damage remedy exists for a violation of the Michigan Constitution in an action against a municipality or an individual government employee, we conclude that summary disposition of plaintiff's constitutional claims was proper pursuant to MCR 2.116(C)(8).[4] *Jones v Powell*, 462 Mich 329, 335; 612 NW2d 423 (2000).

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage

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conditions were endured controls whether to apply the public building exception. The trial court cited *Brown v Genesee Co Bd of Comm'rs*, 222 Mich App 363, 366; 564 NW2d 125 (1997). The *Brown* panel, however, on remand cited *Kerbersky v Northern Michigan Univ*, 458 Mich 525; 582 NW2d 828 (1998), and clarified as follows:

> [T]he Supreme Court concluded that if the building in which the plaintiff is injured is a public building open for use by members of the public, regardless of whether the *situs* of the accident is accessible to the public, the plaintiff should be able to invoke the public building exception. [*Brown v Genesee Co Bd of Comm'rs (On Remand)*, 233 Mich App 325, 327-328; 590 NW2d 603 (1998), lv granted 462 Mich 854; 613 NW2d 718 (2000).]

Although the trial court implemented erroneous reasoning in ruling on defendants' motion, we will not reverse because the court nonetheless reached the correct result. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997).

[4] We affirm the grant of summary disposition despite the trial court's reliance on MCR 2.116(C)(10). *Detroit v Presti*, 240 Mich App 208, 214; 610 NW2d 261 (2000).