

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE HARRELL,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee,

and

DONNA LYNN BAKER,

Defendant.

UNPUBLISHED

July 23, 2002

No. 232204

Wayne Circuit Court

LC No. 99-902259-NI

Before: Talbot, P.J., and Cooper and D.P. Ryan*, JJ.

PER CURIAM.

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

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Each governmental agency having jurisdiction over a highway is required to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). However, a governmental agency cannot be held liable for injuries caused by a defective highway unless it "knew, or in the exercise of reasonable diligence should have

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

known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place.” MCL 691.1403.

Under the statute, notice can be proved in one of three ways: (1) actual notice, (2) existence of the defect for over 30 days, which creates a presumption of notice, or (3) constructive notice, i.e., evidence showing that the city should have discovered and repaired the defect in the exercise of reasonable care. *Beamon v Highland Park*, 85 Mich App 242, 245; 271 NW2d 187 (1978). Constructive notice can be inferred, for example, from evidence that the defect was caused by erosion over a two- or three-month period and employees of the governmental agency inspected the area in question during that time, *Peterson v Dep’t of Transportation*, 154 Mich App 790, 796-797; 399 NW2d 414 (1986), from evidence that the defect had existed intermittently for a period of years, was readily visible to drivers, and city police officers occasionally patrolled the area, *Burgdorf v Holme-Shaw*, 356 Mich 45, 50; 96 NW2d 164 (1959), or from evidence that the governmental agency knew of prior accidents that had occurred under similar circumstances. *Sweetman v State Hwy Dep’t*, 137 Mich App 14, 23; 357 NW2d 783 (1984). Constructive notice cannot be inferred from the fact that the city failed to undertake inspections and thus failed to discover a defect that an inspection would have revealed. *Thomas v Flint*, 123 Mich 10; 81 NW 936 (1900).

Defendant presented evidence that it had no notice of the defect at issue. Plaintiff presented no evidence of actual notice on the part of the city by showing that it set the traffic signal with an improper timing sequence or that the improper timing sequence resulted from a malfunction of which the city had notice. Plaintiff had no evidence as to how long the improper timing sequence had existed, if at all, prior to the day of his accident and thus notice cannot be presumed. Nor was there any evidence from which it could be inferred that the defect had existed for sufficient time to enable the city to discover and rectify it. Since plaintiff has failed to present any evidence to show actual or constructive notice on the part of defendant, the trial court did not err in dismissing plaintiff’s claim against the city.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan