

STATE OF MICHIGAN
COURT OF APPEALS

ALIZLEE L. HAYWOOD,

Plaintiff-Appellant,

v

UNASOURCE HEALTH, L.L.C.,

Defendant-Appellee.

UNPUBLISHED

June 17, 2004

No. 245748

Oakland Circuit Court

LC No. 02-037967-NO

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendant in this negligence case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) because defendant created the allegedly defective condition of the sidewalk at issue or, alternatively, because defendant had constructive knowledge of the defect. We disagree. We review the trial court's decision on the motion for summary disposition de novo. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). In doing so, we view the pleadings and admissible evidence in the light most favorable to the nonmoving party. *Id.*

Considering first plaintiff's argument that defendant was responsible for creating the allegedly defective condition of the sidewalk, it is true that a premises possessor is responsible to an invitee for injury resulting from an unsafe condition caused by the active negligence of the premises possessor or its employees. See, e.g., *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). However, there is no evidence to support a finding that either defendant or its employees – as opposed to an independent contractor – installed the sidewalk.¹ The only

¹ As a general matter, a party is not vicariously liable for the negligence of an independent contractor. See *Zdrojewski v Murphy*, 254 Mich App 50, 67; 657 NW2d 721 (2002) (indicating that hospital would not be vicariously liable for negligence by a doctor who was an independent contractor). Plaintiff does not address the issue of vicarious liability and, thus, has not established any basis for holding defendant liable for an act by an independent contractor in

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record evidence regarding installation of the sidewalk is the statement of an employee of defendant in an affidavit indicating that it was newly constructed. Absent any evidence that defendant constructed the sidewalk, any conclusion that defendant or its employees installed the sidewalk would be mere conjecture or speculation, which is insufficient to create a genuine issue of material fact for trial. *Karbel v Comerica Bank*, 247 Mich App 90, 97-98; 635 NW2d 69 (2001). Thus, there was no evidence in support of plaintiff's theory that defendant was liable for creating the allegedly defective condition of the sidewalk so as to create a genuine issue of material fact for trial on this basis.

Turning to plaintiff's alternative argument that there was evidence that defendant had constructive notice of the condition of the sidewalk, a premises possessor can, in appropriate circumstances, be held liable to an invitee for an injury resulting from the failure to exercise reasonable care to discover a dangerous condition on the premises. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). But plaintiff herself stated in an affidavit that the section of the sidewalk she stepped onto "was not crumbled and did not appear to me to be defective." Further, there was no evidence indicating that a reasonable inspection of the area would have uncovered the alleged defect in the sidewalk. Accordingly, there was no basis to support a conclusion that plaintiff's alleged fall resulted from defendant's failure to exercise reasonable care to discover the alleged defect in the sidewalk because no evidence was presented that a reasonable inspection of the area would have indicated the presence of the defect. Thus, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray

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installing the sidewalk.