STATE OF MICHIGAN

COURT OF APPEALS

ANN PERRING, Plaintiff-Appellee,	UNPUBLISHED October 16, 2012
v	No. 305120 Macomb Circuit Court
CITY OF STERLING HEIGHTS, Defendant-Appellant.	LC No. 2010-000955-NO

Before: OWENS, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

The City of Sterling Heights ("the City") appeals as of right the trial court's denial of its motion for summary disposition[1] in this case involving governmental immunity. We reverse and remand for proceedings consistent with this opinion.

On the morning of March 5, 2008, Ann Perring was pushing her walk-behind snowblower on the sidewalk. She headed north on the sidewalk from her driveway toward the driveway of her next door neighbor. When Perring reached her next door neighbor's driveway, she turned the snowblower around and began to head south toward her property. Shortly after turning around, the snowblower abruptly stopped. Perring alleges that the snowblower stopped because it was caught on a raised portion of the sidewalk. Perring identified during her deposition that the location of the sidewalk that was allegedly defective was in front of Perring's next door neighbor's property, located at 39114 Byers Street, on the northwest corner of the junction between the second and third cement blocks south of Perring's next door neighbor's driveway. As a result of the snowblower's sudden stop, Perring was allegedly projected over the snowblower, landed on the ground and suffered numerous injuries. The day of the incident was the first time that Perring had ever used a snowblower, and was also the first time since Perring purchased her home in 1988 that she had walked on the portion of the sidewalk where the incident occurred.

We review the trial court's denial of a motion for summary disposition de novo.[2] "MCR 2.116(C)(7) provides that a motion for summary disposition may be raised on the ground that a

[1] MCR 2.116(C)(7), (C)(10).

claim is barred because of immunity granted by law."[3] "To survive such a motion, the plaintiff must allege facts justifying the application of an exception to governmental immunity."[4] "[A]ll well-pleaded allegations must be accepted as true and construed in favor of the nonmoving party" unless the parties submit admissible contradictory documentary evidence.[5] "If there are no material facts in dispute or if reasonable minds could not differ regarding the legal effect of the facts, the issue of governmental immunity is resolved as an issue of law."[6]

The City argues that the trial court erred when it denied its motion for summary disposition because Perring did not submit evidence that the City had constructive notice of the alleged defect or that the defect had been present for more than 30 days. Thus, the claim is barred by governmental immunity. We agree.

"Under the governmental tort liability act [("GTLA")],[7] governmental agencies are immune from tort liability when engaged in a governmental function."[8] "'[T]he immunity conferred upon governmental agencies is broad, and the statutory exceptions thereto are to be narrowly construed.'"[9] There are six statutory exceptions to governmental immunity, one of which is the highway exception.[10] The highway exception to governmental immunity, which applies to sidewalks,[11] states in pertinent part that:

> Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency.[12]

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[2] *Herman v City of Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004).

[3] *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010).

[4] *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001).

[5] *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006) (citation and quotations omitted).

[6] *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 578; 808 NW2d 578 (2011).

[7] MCL 691.1401, *et seq.*

[8] *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 156; 615 NW2d 702 (2000) (citations omitted).

[9] *Thurman v City of Pontiac*, 295 Mich App 381, 384; __ NW2d __ (2012), quoting *Nawrocki*, 463 Mich at 158.

[10] *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 203 n 3; 731 NW2d 41 (2007).

[11] MCL 691.1401(c); *Thurman*, 295 Mich App at 385.

[12] MCL 691.1402(1).

Pursuant to MCL 691.1403:

> No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have 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.

In support of her position that the City had notice of the alleged defect, Perring testified that several years before she fell, diseased trees were removed from in front of her next door neighbor's house. Perring was not present for the tree removal. Perring admitted that before she fell, she did not inspect the sidewalk adjacent to the site of the tree removal. In fact, Perring testified that she had never walked on the portion of the sidewalk where the incident occurred until the day of the incident. Perring further testified that her next door neighbor never informed her that there was a defect on the sidewalk before she fell. After the incident, however, a City employee informed Perring that the sidewalk on her street was "in line" for repair. Perring did not provide the employee's name. Perring further testified to a second conversation she had with an individual who was purportedly involved in the repair of the sidewalk. The second individual allegedly stated that the sidewalk was raised by tree roots. Perring, however, was unaware of the individual's name. Moreover, as the trial court noted, Perring "did not indicate that the worker had seen the trees before they were removed, and did not establish that he had knowledge or experience to draw such a conclusion."

Perring had personal knowledge that trees in front of her next door neighbor's home were removed several years before she allegedly fell. The remainder of Perring's testimony, however, is hearsay as it contains statements made to Perring by individuals who were not under oath, and whose statements are being offered by Perring to prove that the City had notice of the defect.[13] When considering a motion brought pursuant to MCL 2.116(C)(7), deposition testimony "shall only be considered to the extent that [it] . . . would be admissible as evidence[,]"[14] and hearsay statements are not admissible evidence.[15] Thus, Perring's testimony fails to establish that the City had actual or constructive notice of the alleged defect or that the defect was "readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place."[16] As a result, summary disposition in favor of the City is proper.

Moreover, the pre-suit notice provided by Perring to the City was inadequate. Whether the City was provided with adequate pre-suit notice involves the interpretation of a statute, which

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[13] MRE 801(c).

[14] *Willett*, 271 Mich App at 45, quoting MCR 2.116(G)(6) (quotation marks omitted).

[15] MRE 801(c); MRE 802.

[16] MCL 691.1403.

is a question of law that we review de novo.[17] Before a person can recover for injuries allegedly resulting from a defective highway, the injured person must:

> within 120 days from the time the injury occurred . . . serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.[18]

It is not necessary that the notice "be provided in a particular form."[19] Rather, "[i]t is sufficient if it is timely and contains the requisite information."[20]

On March 13, 2008, a letter was sent to the City on Perring's behalf, which indicated that on March 5, 2008, Perring "tripped and fell due to the hazardous and defective condition of the city sidewalk" located "directly in front of 39114 Byers, Sterling Heights, Michigan 48310." Because the notice provides the address where the alleged defect is located and indicates that the defect is "directly in front of" the address, we find that the notice specifies the exact location of the defect as required. While the letter fails to specify the nature of the defect, Perring attached photographs of the alleged defect taken from both close up and from a distance. Thus, the nature of the defect was also included in the notice. The notice, however, fails to specify the injury Perring sustained. Rather, the letter indicates that Perring suffered "serious injuries and damages." Because the statute regarding notice[21] "is straightforward, clear, unambiguous, and not constitutionally suspect . . . it must be enforced as written."[22] Accordingly, the pre-suit notice was deficient.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder

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[17] *Plunkett v Dep't of Transp*, 286 Mich App 168, 174; 779 NW2d 263 (2009).

[18] MCL 691.1404(1).

[19] *Plunkett*, 286 Mich App at 176.

[20] *Id.*

[21] MCL 691.1404.

[22] *Rowland*, 477 Mich at 219.