

STATE OF MICHIGAN
COURT OF APPEALS

JACLYN WALKER,

Plaintiff-Appellant,

v

JAMES HENRY BENNETT and DETROIT
DEPARTMENT OF PUBLIC LIGHTING,

Defendants,

and

WAYNE COUNTY,

Defendant-Appellee.

UNPUBLISHED

November 26, 1996

No. 174506

LC No. 92-201106-NI

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order that granted summary disposition to defendant Wayne County pursuant to MCR 2.116(C)(10) and dismissed her complaint for damages sustained during an automobile accident which, she alleged, was due to defendant Wayne County's failure to repair a defective traffic signal. We reverse and remand.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim and may be granted when, except with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment or partial judgment as a matter of law. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 85; 514 NW2d 185 (1994). The opponent must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Id.* The trial court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence presented. *Id.* Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. If it appears to the court that the opposing party, rather than the moving party, is

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

entitled to judgment, the court may render judgment in favor of the opposing party. *Id.* at 85-86. If the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay. *Id.* at 86. On appeal, an order granting summary disposition is reviewed de novo. The record must be reviewed to determine whether the successful party was entitled to judgment as a matter of law. *Id.*

We hold that the trial court erred in concluding that MCL 691.1403; MSA 3.996(103) barred plaintiff's claim. The affidavits submitted by plaintiff clearly establish that there is a genuine issue regarding whether the defect existed so as to be readily apparent to an ordinarily observant person for more than thirty days before the accident and therefore whether the conclusive presumption of notice applies. Further, these affidavits provide evidence which could permit a jury to conclude that defendant Wayne County should have discovered and repaired the defect in the exercise of reasonable diligence, and therefore that it had constructive notice of the defect. *Beamon v Highland Park*, 85 Mich App 242, 245; 271 NW2d 187 (1978).

As an alternative basis for affirmance, defendant Wayne County argues that the traffic signals are outside the improved portion of the roadway, and therefore, Wayne County is immune from tort liability for a failure to repair them. However, the authority on which Wayne County relies is no longer controlling. *Pick v Gratiot Co Rd Comm*, 203 Mich App 138; 511 NW2d 694 (1993) was reversed by the Supreme Court sub nom *Pick v Syzmczak*, 451 Mich 607; ___ NW2d ___ (1996). Contrary to this Court's ruling, the Supreme Court concluded that there is a duty to provide traffic control devices or warning signs at points of hazard affecting vehicular traffic on roadways. Accordingly, we reject Wayne County's invitation to affirm on this basis.

Reversed and remanded for further proceedings on plaintiff's claim against defendant Wayne County. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ David H. Sawyer

/s/ William E. Collette