STATE OF MICHIGAN

COURT OF APPEALS

KOREN KARIANEN,

Plaintiff-Appellant,

v

EWEN TROUT CREEK CONSOLIDATED SCHOOL DISTRICT,

Defendant-Appellee.

UNPUBLISHED
July 31, 1998

No. 204073
Ontonagon Circuit Court
LC No. 96-000086 NI

Before: Markman, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

In this personal injury action, plaintiff appeals by right from a trial court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) based on the public building exception, MCL 691.1406; MSA 3.996(106), to the governmental immunity act, MCL 691.1401 *et seq.*; MSA 3.996(101) *et seq*. We affirm.

Plaintiff first argues that the trial court erred in finding that public exception did not apply to her claim. However, plaintiff testified in her deposition that she slipped and fell on the sidewalk next to the school building. The public building exception is limited to dangers actually presented by defects in the building itself, and does not apply to areas outside the building, such as sidewalks. *Horace v City of Pontiac*, 456 Mich 744; 575 NW2d 762 (1998); *Eberhard v St Johns Public Schools*, 189 Mich App 466, 467; 473 NW2d 745 (1991). Therefore, unless plaintiff could show that a defect in the building itself caused her injury, plaintiff was not entitled to maintain an action. We conclude that plaintiff could not meet this burden.

Plaintiff argues that she presented sufficient evidence to create a genuine issue of fact regarding whether her fall occurred as a result of some defect in the school building that allowed water from melting snow to drip or drain on that portion of the sidewalk on which she fell. We disagree. Although proximate cause is usually a factual issue to be decided by the jury, *Shutte v Celotex Corp*, 196 Mich App 135, 138; 492 NW2d 773 (1992), plaintiff put forth no evidence to support her proposition that the ice on which she slipped was caused by a defect in defendant's building rather than being caused by

the general icy conditions that were prevalent on the day in question. Plaintiff offered to provide further evidence, particularly through expert testimony, that defendant's building was defective and that this defect caused plaintiff's fall. However, this Court concludes that such evidence would merely have been speculative. It would be virtually impossible to recreate the conditions that occurred on the day in question. It had been more than three years since plaintiff's fall at the time summary disposition was granted. In order to show that defendant's negligence was a proximate cause of plaintiff's injury, plaintiff would have had to produce evidence that the building was defective. Plaintiff would also have had to show that this defect existed at the time of defendant's fall and, combined with the particular conditions that obtained on the day in question, resulted in the formation of an amount of ice that would not have formed had the defect not existed. Mere speculation and conjecture are insufficient to raise an issue of fact for the jury to decide. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

Plaintiff next argues that the trial court erred in refusing to allow her to amend her pleadings pursuant to MCR 2.116(H)(5) to specifically allege that the building defect that allegedly caused the ice to form on the sidewalk was a deterioration in the roof of the building. We acknowledge that a trial court should freely grant a plaintiff leave to amend her pleadings when justice so requires. *Weymers v Khera*, 454 Mich 639,658; 563 NW2d 647 (1997). However, as previously noted, in light of the factual circumstances of this case, most particularly the transient nature of the specific weather conditions on the day in question and the lengthy passage of time since plaintiff's injury, we conclude that any allegation that a specific building defect caused plaintiff's fall would be based on little more than speculation and conjecture. These additional allegations would not result in a genuine issue of material fact and therefore, such an amendment would be futile. *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 625;403 NW2d 830 (1986).

Affirmed.

/s/ Stephen J. Markman
/s/ Richard Allen Griffin
/s/ William C. Whitbeck