STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA L. WRIGHT
and CLAYTON WRIGHT,

Plaintiffs-Appellants,

v

MICHAEL J. REININGER, WAYNE COUNTY ROAD COMMISSION and COUNTY OF WAYNE,

Defendants-Appellees.

UNPUBLISHED
March 16, 1999

No. 203904
Wayne Circuit Court
LC No. 96-619455 NI

Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

Plaintiffs, who initiated this case after plaintiff Patricia Wright was injured in an automobile accident involving defendant Reininger, appeal as of right from orders granting defendants' motions for summary disposition. We affirm.

Plaintiffs argue that the trial court should not have dismissed their claims against defendants Wayne County Road Commission and the County of Wayne (collectively, "Wayne County") because there were questions of fact regarding whether the county breached its duty to provide adequate traffic signs in highway areas known to be hazardous. Although the trial court did not specify the court rule under which it granted summary disposition to Wayne County, we find by implication that the ruling was based on MCR 2.116(C)(7), which allows summary dismissal of claims barred by governmental immunity. We review a grant of summary disposition under MCR 2.116(C)(7) de novo. *Iovino v Michigan*, 228 Mich App 125, 131; 577 NW2d 193 (1998). Like the trial court, we consider all documentary evidence submitted by the parties and accept the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true. *Id.*; *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994). We view the uncontradicted allegations in favor of the plaintiff and determine whether an exception to governmental immunity applies. *Id.*

Plaintiffs argue that Wayne County had a duty under MCL 691.1402(1); MSA 3.996(102)(1), the "highway exception" to the generally broad grant of governmental immunity, to provide additional

traffic signs at the intersection where the accident took place because it constituted a "point of hazard" under *Pick v Szymczak*, 451 Mich 607, 624; 548 NW2d 603, 624 (1996). The *Pick* Court held that, under the highway exception, "a duty is imposed on governmental agencies to provide adequate warning signs or traffic control devices at, or in regard to, [known] points of hazard affecting roadways within their jurisdiction." *Id*. The Court defined a "point of hazard" as "any condition that directly affects vehicular travel on the improved portion of the roadway so that such travel is not reasonably safe." *Id*. at 623.

Plaintiffs contend that the intersection was a point of hazard because the road on which Patricia Wright was traveling, Beech-Daly, had stop signs and a flashing red light at the intersection, whereas the road on which Reininger was traveling, Pennsylvania, had only a flashing yellow light. Plaintiffs believe that because several other intersections in the area are four-way stops, persons traveling on Beech-Daly are easily misled into thinking that the stop at Pennsylvania is also a four-way stop, which prompts them to enter the intersection even in the presence of oncoming Pennsylvania traffic. They assert that Wayne County had a duty to install signs on Beech-Daly indicating that "cross traffic does not stop." We disagree.

We do not believe that the intersection was a point of hazard as contemplated by the Court in *Pick, supra* at 624. That the two-way stop in question looked identical, from the point of view of someone traveling on Beech-Daly, to the four-way stops in the area – i.e., that it had stop signs and a flashing red light – did not reasonably give rise to an assumption that the stop in question would also be a four-way stop. The evidence established that the intersection was clear of visual obstructions, meaning that a reasonably prudent driver on Beech-Daly would be able to tell, by the presence or absence of octagonal signs, whether Pennsylvania traffic was obligated to stop. The intersection is simply not analogous to the unusual situations deemed hazards in *Pick, supra* at 611-612 (an orchard obstructed the view of cross-traffic at an intersection containing no stop or yield signs), *Iovino, supra* at 129 (a red light before a railroad crossing changed to a flashing yellow light when a train approached), and *McKeen v Tisch*, 223 Mich App 721, 724; 567 NW2d 487 (1997) (a severed tree limb dangled precariously over a road).

Plaintiffs emphasize the accident history of the intersection in arguing that it was a point of hazard about which Wayne County should have been aware. Specifically, they claim that there were six right-angle accidents at the intersection in 1993, seven in 1994, and eight in 1995. However, the evidence presented in the trial court gave no causation specifics about the 1995 accidents, and it showed that only four accidents in 1993 and five accidents in 1994 could reasonably have resulted from the danger alleged by plaintiffs, i.e., from a driver on Beech-Daly erroneously concluding that the intersection was a four-way stop. Plaintiffs argue that even these lower numbers are evidence of a hazard, since the Michigan Manual of Uniform Traffic Control Devices ("MMUTCD") indicates that a four-way stop might be warranted if there are "five or more reported accidents of a type susceptible of correction by a multi-way stop installation in a 12-month period." However, even if a multi-way stop *might* have been warranted under the manual, that does not necessarily mean that the intersection was a point of hazard for purposes of the highway exception, especially since the number of relevant accidents in this case -- five -- is the *minimum* number needed to trigger an investigation of the need for a such an

installation. The documented accident history of the intersection does not change our conclusion that a reasonably prudent driver on Beech-Daly would determine whether a four-way stop exists before entering the intersection in the presence of oncoming Pennsylvania Avenue traffic.

Nor do the affidavits of plaintiffs' experts change our conclusion that Wayne County was properly granted summary disposition. Wayne County's traffic engineer, William Savage, opined that the intersection was confusing and unsafe for motorists and that Wayne County should have used a "cross-traffic does not stop" sign at the intersection. To combat a motion for summary disposition, an affiant must set forth *with particularity* the facts on which a conclusion is based. *SSC Associates Ltd Partnership v General Retirement System of Detroit*, 192 Mich App 360, 364-365; 480 NW2d 275 (1991). According to his affidavit, Savage based his conclusion on the fact that Wayne County's signing scheme was non-standard and on his belief that twenty-seven accidents in four years occurred at the intersection. However, a non-standard signing scheme is not per se unsafe, and Savage failed to indicate how many of the accidents in question resulted from a driver on Beech-Daly mistaking the intersection for a four-way stop. Savage's affidavit does not lead us to conclude that the intersection was a point of hazard for purposes of the highway exception to governmental immunity.

Nor does the affidavit of Robert Pachella, plaintiffs' psychology expert, persuade us that the intersection was a point of hazard. Pachella's opinion that the signing scheme caused drivers to mistake the intersection for a four-way stop was not supported by any meaningful evidence. He gave no indication regarding the frequency with which such mistakes occurred, and he cited only one person, plaintiff Patricia Wright, who had actually made the mistake. An affidavit that simply states an expert's opinion, but does not give any scientific or factual support for its conclusion, is insufficient to create a genuine issue of material fact, and, accordingly, is insufficient to demonstrate that the intersection might have been a point of special danger. See *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 175; 551 NW2d 132 (1996).

Plaintiffs have failed to show that the intersection constituted a point of hazard such that Wayne County was obligated to erect a different signing scheme to protect drivers. While we do not dispute that a warning sign or additional stop signs might have made the intersection *safer*, we are not persuaded that it was unreasonably unsafe to begin with. A reasonably prudent driver, before entering an intersection in the presence of oncoming cross-traffic, ascertains whether the cross-traffic is obligated to stop. The trial court did not err in granting Wayne County summary disposition.

Plaintiffs also argue that the trial court should not have dismissed their claims against defendant Reininger because there were questions of fact regarding whether he breached his duty to proceed through the intersection with due care. Although the trial court did not specify the court rule under which it granted Reininger summary disposition, because the trial court relied on documentary evidence, we find by implication that the ruling was based on MCR 2.116(C)(10). We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Like the trial court, we look at the entire record, view the evidence in favor of the nonmoving party, and decide if there exists a relevant issue about which reasonable minds might differ. *Id.* If, as in the instant case, the nonmoving party would bear the burden of proof at trial, that party, in order to avoid summary disposition, must

provide documentary evidence showing the existence of a disputable issue. *Quinto v Cross & Peters*, 451 Mich 358, 362; 574 NW2d 314 (1996).

Plaintiffs argue that there were disputed factual issues regarding whether Reininger was speeding and whether he exercised due care in attempting to avoid the collision. We disagree. Our review of the record reveals no evidence that Reininger was speeding. Although plaintiffs contend that he admitted to driving two miles an hour over the speed limit, no such admission was before the trial court. We will not expand the record on appeal. MCR 7.210(A); *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990). Moreover, since Reininger was facing a flashing yellow light, he was permitted to assume that drivers on Beech-Daly would stop and allow him to proceed through the intersection. See *Berk v Blaha*, 384 Mich 582-583; 184 NW2d 926 (1971), and *DePriest v Kooiman*, 379 Mich 44, 49; 149 NW2d 449 (1967). Only when the Wright vehicle entered the intersection was he obligated to stop, *DePriest, supra* at 49, and the record reveals no evidence that he failed to apply his brakes when Wright proceeded past the stop sign.

Plaintiffs, who would bear the burden of proof at trial, have simply failed to provide evidence that Reininger was negligent. Although they provided an affidavit of an automobile accident analyst who opined that Reininger could have avoided the accident if he had been proceeding with caution, the analyst did not identify with particularity the admissible facts on which he based his conclusion, as required by MCR 2.119(B)(1)(b). As indicated earlier, an affidavit that simply states an expert's opinion, without providing any scientific or factual support, is insufficient to create a genuine issue of material fact. *Travis, supra* at 175. Accordingly, the trial court did not err in granting Reininger's motion for summary disposition.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs
/s/ Kurtis T. Wilder