STATE OF MICHIGAN

COURT OF APPEALS

CONSTANCE M. SUMNER and JAMES R. SUMNER, Plaintiffs-Appellants, v GENERAL MOTORS CORPORATION, Defendant-Appellee.	UNPUBLISHED December 21, 1999 No. 211094 Shiawassee Circuit Court LC No. 89-008613 NI

Before: Doctoroff, P.J., and O'Connell and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

In 1989, plaintiffs brought an action against defendant for negligent manufacture of an automobile and breach of an implied warranty of fitness. Plaintiffs appealed from a judgment of no cause of action entered after a jury trial in 1992. This Court reversed and remanded for a new trial, holding that certain evidence should not have been admitted during trial. *Sumner v General Motors Corp*, 212 Mich App 694, 700; 538 NW2d 112 (1995). Specifically, the panel concluded that it was error requiring reversal to admit videotaped crash tests and defense expert testimony regarding whether weld defects were a proximate cause of enhanced injury suffered during an automobile accident.

After the case was remanded, but before a new trial commenced, a different panel of this Court issued *Lopez v General Motors Corp*, 219 Mich App 89; 555 NW2d 875, vacated 219 Mich App 801 (1996) (*Lopez I*). The panel declared a conflict with *Sumner*, and this Court then convened a conflict panel pursuant to Administrative Order No. 1996-4 (now MCR 7.215[H]). The conflict panel overruled *Sumner* with regard to the evidentiary issue. *Lopez v General Motors Corp*, 224 Mich App 618, 621; 569 NW2d 861 (1997) (*Lopez II*).

Defendant then moved for summary disposition, arguing that *Sumner* was no longer the law of the case because it had been overruled by *Lopez II* and that the original judgment of no cause of action should therefore be reinstated. The trial court granted the motion. We review the trial court's decision

to grant summary disposition de novo to determine whether any genuine issue of material fact exists that would prevent entering judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). In this case however, no factual dispute existed—the only issue faced by the trial court was the legal effect of *Lopez II* on the case. We review questions of law de novo. *Oxley v Dep't of Military Affairs*, 460 Mich 536, 540-541; 597 NW2d 89 (1999). Moreover, the applicability of the law-of-the-case doctrine is a question of law that we review de novo. *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998).

On appeal, plaintiffs argue that the trial court erred in determining that the law-of-the-case doctrine was inapplicable. Under the law-of-the-case doctrine, a ruling by an appellate court binds the lower court on remand and the appellate court on any subsequent appeal in the same case. *Kalamazoo*, *supra* at 135; *Driver v Hanley (After Remand)*, 226 Mich App 558, 565; 575 NW2d 31 (1997). Generally, the doctrine applies regardless of whether the ruling was correct; however, the doctrine does not apply where there has been an intervening change of law. *Freeman v DEC International, Inc*, 212 Mich App 34, 38; 536 NW2d 815 (1995). For an intervening change of law to prevent application of the doctrine, the change of law must occur after the appellate court's initial ruling. *Id*.

In this case, after the initial decision in *Sumner* that certain evidence was inadmissible, a conflict panel of this Court overruled the evidentiary ruling of *Sumner*. *Lopez II*, *supra* at 621. Plaintiffs cite no authority for their argument that the intervening change of law must originate in a higher court's ruling. MCR 7.215(H)(6) provides that the decision of a conflict panel of this Court is binding on all panels of this Court unless reversed or modified by our Supreme Court. The panel in *Sumner* remanded for a new trial without certain videotape and expert evidence. However, the decision in *Lopez II* constitutes an intervening change in law, such that the evidentiary ruling in *Sumner* is no longer the law of the case. Therefore, plaintiffs' only argument on appeal fails, and we accordingly affirm the decision of the trial court.[1]

Affirmed.

/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder

[1] Defendant also argues, as an alternative basis for affirming the trial court, that the court correctly granted summary disposition because the prior judgment of no cause of action constituted res judicata. However, because plaintiffs failed to argue that the trial court's application of res judicata was erroneous, we need not review this issue. A party waives appellate review of an issue where that issue is not raised in the party's brief on appeal. *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995); *In re Subpoena Duces Tecum*, 205 Mich App 700, 704; 518 NW2d 522 (1994).