

STATE OF MICHIGAN  
COURT OF APPEALS

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THERESA BURTON,

Plaintiff-Appellant,

v

STEVEN DEWAYNE JORDAN, and  
APARTMENT GROUP, INC., d/b/a TERRACE  
COURT APARTMENTS,

Defendants-Appellees,

and

LORENE JORDAN,

Defendant.

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UNPUBLISHED

February 22, 2000

No. 211461

Wayne Circuit Court

LC No. 97-709866 NO

Before: Hood, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant Apartment Group, Inc., d/b/a Terrace Court Apartments.<sup>1</sup> Plaintiff was injured when a rifle was discharged in an apartment above hers, and the bullet pierced the ceiling, striking plaintiff. The trial court concluded that defendant landlord had no duty in regard to this unforeseeable event. We affirm.

A party opposing a motion for summary disposition must come forward with evidence demonstrating that a factual dispute exists for trial. *SSC Associates Ltd. Partnership v General Retirement System*, 192 Mich App 360, 363-364; 480 NW2d 275 (1991); MCR 2.116(G)(4). A disputed fact must be established by admissible evidence. *Id.* Opinions, conclusory denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule. *Id.* In the present case, plaintiff presented the testimony of apartment manager Joe Love which contained the hearsay statements of tenants. This testimony failed to satisfy the requirements of MCR 2.116(G)(4). Plaintiff's contention that the statements are not hearsay, and her reliance on *People v Haney*, 86 Mich App 311, 316-317;

272 NW2d 640 (1978), are misplaced. The *Haney* decision held that an utterance may be used to “show the effect on the hearer, not to prove its truth.” In the present case, plaintiff is not relying on the hearsay statements to demonstrate the “effect” on Love, but rather, is attempting to demonstrate that defendant had prior knowledge of Jordan’s “violent propensities” and that he acted in conformance therewith. The proffered evidence is clearly hearsay. Plaintiff failed to satisfy the requirements of MCR 2.116(G)(4). Additionally, plaintiff’s characterization of Love’s testimony is inconsistent with the actual statements made by Love. Accordingly, the trial court properly granted defendant’s motion for summary disposition.

Plaintiff also argues that the trial court erred in failing to grant plaintiff’s motion to compel documents. This issue is not preserved for appellate review. Although raised below, it was not addressed and decided by the trial court. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Accordingly, we decline to address it.<sup>2</sup>

Affirmed.

/s/ Harold Hood  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot

<sup>1</sup> A default judgment was granted against defendant Steven Dewayne Jordan (hereinafter “Jordan”), and he is not a party to this appeal.

<sup>2</sup> Furthermore, we note that plaintiff has taken inconsistent positions regarding her motion to compel. At the trial level, plaintiff filed a motion to compel all rules and regulations which applied to the tenants of the apartment complex. On appeal, plaintiff contends that the trial court erred in granting defendant’s motion for summary disposition where plaintiff’s motion to compel sought evidence which would have corroborated defendant’s actual notice of Jordan’s prior firing of a weapon and eviction. Plaintiff has failed to demonstrate that the information requested in the trial court would result in factual support for her claim. *Ireland v Edwards*, 230 Mich App 607, 623; 584 NW2d 632 (1998).