

STATE OF MICHIGAN
COURT OF APPEALS

WANDA SINDEL,

Plaintiff-Appellant,

v

MERCHANT DETECTIVE AGENCY, d/b/a
MERCHANT SECURITY SERVICE, and ALI
SAAD, Next Friend of JAMIL ALI SAAD, Minor,

Defendants,

and

RITE-AID OF MICHIGAN, INC., d/b/a RITE-AID
DISCOUNT PHARMACY, d/b/a RITE-AID
PHARMACY, and Y.H.S., INC., d/b/a
PAISANO'S RESTAURANT,

Defendants-Appellees.

UNPUBLISHED

February 16, 2001

No. 214064

Wayne Circuit Court

LC No. 97-702578-NO

Before: Kelly, P.J., and White and Wilder, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. Defendants' motions were brought under MCR 2.116(C)(8) alone. The circuit court's consideration of, and grant of, defendants' motions under MCR 2.116(C)(10) was thus improper, particularly given that discovery had only recently begun.¹ Nor was summary

¹ Plaintiff filed her complaint on January 27, 1997. The circuit court's scheduling order set a discovery cutoff date of September 8, 1997. Rite Aid filed a motion for summary disposition pursuant to MCR 2.116(C)(8) on April 18, 1997, and Paisano filed a motion under 2.116(C)(8) on April 25, 1997.

Plaintiff filed her response to defendants' motions on May 9, 1997, and on the same day filed a motion to amend her complaint, which the circuit court granted orally at the May 16, 1997 hearing on defendants' motions, and effectuated by order entered on May 30, 1997. In addition to the duties and breaches thereof set forth by the majority, plaintiff's amended complaint alleged that defendants "had knowledge of the dangerous and rough behavior which occurred on a daily

disposition proper under MCR 2.116(C)(8). Plaintiff's amended complaint stated viable premises liability claims against both defendants. See n 1, *infra*. If the court was of the opinion that further amendment was required, it should have been permitted.

I would reverse and remand for further proceedings.

/s/ Helene N. White

basis in the parking lot in question when Fordson High School students were present,” that at all relevant times both defendants possessed, occupied, maintained and/or controlled the parking lot, that on the day in question plaintiff was a business invitee of both defendants, that on the day in question “students were engaging in rough, group behavior” in the parking lot, and that upon leaving Rite-Aid, “plaintiff was struck and knocked to the ground by one or more Fordson High School students in the common parking lot shared by and located between Rite-Aid and Paisano’s.” I do not agree that plaintiff was required to allege and show that defendant had reason to believe that a specific person posed a threat of harm. See *Mason v Royal Dequindre, Inc.*, 455 Mich 391, 398-399; 566 NW2d 199 (1997), quoting 2 Restatement Torts, 2d, § 344, pp 223-224, and comment f thereto.