STATE OF MICHIGAN

COURT OF APPEALS

REBECCA CASTELLANOS, Plaintiff-Appellee,	UNPUBLISHED December 29, 2009
v	No. 286865 Oakland Circuit Court
CITY OF PONTIAC, Defendant-Appellant.	LC No. 2007-082143-NO

Before: Murphy, P.J., and Meter and Beckering, JJ.

METER, J. (*dissenting*).

Because I conclude that defendant was entitled to summary disposition in this case, I respectfully dissent.

First, I find that there existed a "rebuttable inference" that the sidewalk in question was maintained in reasonable repair. MCL 691.1402a(2) states:

> A discontinuity defect of less than 2 inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, crosswalk, or other installation outside of the improved portion of the highway designed for vehicular travel in reasonable repair.

In this case, plaintiff argues that the defect at issue, although it involved a height difference of less than two inches,[1] nonetheless failed to fall within the parameters of MCL 691.1402a(2) because the height difference extended for about 30 inches, along the entire stretch of a sidewalk slab, and therefore involved a greater-than-two-inch *width* defect. Plaintiff's argument is utterly misguided because the "discontinuity defect" here was one involving a vertical drop and not varying widths (such as when a four-foot-wide sidewalk suddenly becomes a three-foot-wide sidewalk). There was no "discontinuity" relating to width. Accordingly, the

[1] I reject plaintiff's alternative argument that a question of fact existed regarding whether the height difference was less than two inches.

defect did indeed fall within the parameters of the statute, and a rebuttable inference of reasonable repair existed.

In contrast with the majority, I cannot conclude that the expert affidavit presented by plaintiff sufficiently rebutted the inference such that summary disposition was inappropriate. The expert offered nothing but general allegations and references to the height discontinuity. See *Jubenville v West End Cartage, Inc*, 163 Mich App 199, 207; 413 NW2d 705 (1987) (discussing a conclusion-oriented affidavit). Significantly, there was no "teeter-tauter [sic]" situation with the sidewalk like there was in *Gadigian*, 282 Mich App at 188-189.[2]

"[M]unicipalities are not required to keep . . . walks in perfectly safe condition. They are liable only when the walks are not reasonably safe." *Jackson v Lansing*, 121 Mich 279, 280; 80 NW 8 (1899). "In cities having many miles of walks it would be an utter impossibility to make these walks absolutely safe . . . . It would require an army of men . . . to do this." *Weisse v Detroit*, 105 Mich 482, 484-485; 63 NW 423 (1895). In my opinion, there was insufficient evidence in this case to show that the sidewalk in question was not *reasonably* safe.

I would reverse and remand for entry of summary disposition in favor of defendant.

/s/ Patrick M. Meter

[2] Although the expert mentioned that the height discontinuity was "non-uniform," the situation nevertheless did not reach, in my opinion, the level of possible danger expressed by the expert in *Gadigian*.