

STATE OF MICHIGAN
COURT OF APPEALS

MINGA PERKINS,

Plaintiff-Appellant,

v

HENRY FORD COMMUNITY COLLEGE,

Defendant-Appellee.

UNPUBLISHED

November 13, 2014

No. 317643

Wayne Circuit Court

LC No. 12-005905-NO

Before: WHITBECK, P.J., and FITZGERALD and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals of right the trial court's final order granting defendant's motion for summary disposition. We reverse and remand.

Plaintiff brought suit against defendant based upon an injury she allegedly received after falling down a portion of a flight of stairs owned by defendant. The trial court granted defendant's motion for summary disposition on the basis that plaintiff's testimony as to what caused her to fall was speculative. After conducting our review of the trial court's decision on defendant's motion for summary disposition de novo, *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008), we hold that plaintiff's testimony was sufficiently clear for a jury to decide whether the chips in the stairs were a dangerous or defective condition of a public building that caused her injury, MCL 691.1406.

Under MCL 691.1406, a government entity can be liable for a failure to maintain a part of a public building that caused a plaintiff's injury. *Renny v Dep't of Transportation*, 478 Mich 490, 500; 734 NW2d 518 (2007); *Kerbersky v Northern Michigan Univ*, 458 Mich 525, 529; 528 NW2d 828 (1998) Here, plaintiff testified that just before falling she felt her foot "go into this little thing," and that she saw the chipped steps after she fell. Plaintiff also submitted to the trial court photographs of the entire staircase that unquestionably contained chipping on the outer end of several steps. Plaintiff's testimony about what caused her to fall was fairly concrete:

Q. Do you know how many stairs you were from the top when you fell?

A. I'm not exactly sure. I might have fell [sic] – I don't know. I know I fell down about two or three stairs maybe.

Q. You fell down two or three, so you were towards the bottom you think?

A. I think. I can't tell you. I don't know for sure.

Q. Do you know which stair specifically caused you to fall?

A. No.

* * *

Q. Can you describe for me what happened when you fell? What did you feel on your feet? You know, how did you fall? Did you slip?

A. I was going down the stairs and I guess—well, I didn't know then, but I know now that I fell I guess there was a little—the stair was broke or something right there, and my foot I guess went into the little thing and I just whoosh, fell on the rest of the stairs.

Q. *Are you guessing that's what happened?*

A. *No. I felt my foot when it went in it. It was too late to do anything. I fell.*

Q. *So you felt your foot went in some kind of –*

A. *The groove.*

Q. Groove?

A. You know, I guess where it was – the stair is chipped.

Q. Okay.

A. *My foot went into it and I just fell.*

* * *

Q. When did you learn about the chip in the stair?

A. I felt my foot go in something so I knew something had happened. You know, I was hurt then so I couldn't really see what was going on.

* * *

Q. Now as you felt your foot go into the chip –

A. Go ahead.

Q. – what part of your foot went in the chip? Your toe?

A. I guess the first part, yeah, *I went to step and it went into that groove and I just fell.*

* * *

Q. And was it your left foot or your right foot which got caught?

A. My right foot.

Q. So you place your right foot down on the stair and did it immediately go into the –

A. Listen, I don't know. *I was walking down the stairs, felt my foot hit this groove, and I went tumbling down.* I don't know what foot hit what foot. *I just know that I went tumbling down once I hit that groove.*

* * *

Q. *You don't know if that what caused you to fall?*

A. *I know the chip is what caused me to fall.* I just don't know by these pictures.

Q. Okay. So you can't say looking at that picture that's what caused you to fall; is that fair?

A. *I know the chip is what caused me to fall.* I just can't say which stair it is by looking at these pictures. More than one stair had a chip. *The chip that I fell in that made me fall was on one of those stairs.* I can't look at these pictures and tell you which chip because there were a lot of chips. I just know if I were to be up in front of the stairs I could tell you then there's the chip I fell in. I can't tell by the picture. [Emphasis added.]

The foregoing is sworn testimony that plaintiff felt the front right part of her foot go into a “groove” as she was walking down the stairs, she fell down immediately thereafter, and was injured. This testimony, coupled with the photographs that exhibit the condition of the steps, create a genuine issue of material fact as to whether the failure to repair the steps, i.e., a defective condition, caused plaintiff to fall and be injured. *Tellin v Forsyth Twp*, 291 Mich App 692, 701; 806 NW2d 359 (2011) (“the public-building exception only applies to claims of failure to repair or maintain a public building . . .”); MCR 2.116(C)(7) & (10).

It is true, as the dissent points out, that two of defendant's employees offered their opinion that the steps were not defective. But that testimony conflicts with plaintiff's testimony about the chipped steps, as well as at least potentially with the photographs. Because plaintiff submitted evidence that the steps were in some level of disrepair, she has created a jury submissable issue. It may be somewhat hard to believe that these small chips caused her to fall (as opposed to her simply overstepping the step), but enough concrete testimony and evidence was provided by plaintiff to create a genuine issue of material fact. The trier of fact, rather than this appellate court, should ultimately resolve whether the chipped stairs were defective and actually caused plaintiff to fall.

Reversed and remanded for further proceedings. Plaintiff may tax costs. MCR 7.219(A).
We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray