

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA HENDRIX-BROWN and CHARLES
BROWN,

UNPUBLISHED
December 17, 2013

Plaintiffs-Appellees,

v

No. 311695
Genesee Circuit Court
LC No. 11-095984-NO

MT. MORRIS CHARTER TOWNSHIP,

Defendant-Appellant.

Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order denying its motion for summary disposition¹ pursuant to MCR 2.116(C)(7) and (10). We reverse and remand for entry of an order granting defendant's motion.

Plaintiff² was involved in a verbal altercation with Ericka Coleman inside plaintiff's home for five to ten minutes. Plaintiff followed Coleman and her children outside the residence to the driveway of the neighboring abandoned home where Coleman's vehicle was parked, and the two continued arguing. When Coleman went to enter her vehicle, plaintiff turned around and threw her hands up. Next, plaintiff woke up and heard voices. Apparently, plaintiff fell and hit the sidewalk. Plaintiff's husband observed the fall. He testified, "I wasn't for sure what she went down for but I seen her go down." Plaintiff attributed her fall to an uneven sidewalk, but had no recollection of the fall and could not indicate the cause of her fall. Defendant moved for summary disposition, asserting governmental immunity because plaintiff could not identify the proximate cause of her fall to establish an exception to immunity and plaintiff failed to satisfy the statutory notice requirements. The trial court held that plaintiff reasonably complied with the

¹ MCR 7.202(6)(a)(v); MCR 7.203(A)(1).

² Pamela Hendrix-Brown and Charles Brown, a married couple, were separated at the time of plaintiff's deposition. The claim raised by Charles Brown is derivative of his wife's claims. Therefore, the singular term "plaintiff" refers to Pamela Hendrix-Brown only.

notice provisions and factual issues regarding the location and cause of the fall³ precluded summary disposition.

A trial court's ruling regarding a motion for summary disposition presents a question of law subject to de novo review. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). The availability of governmental immunity presents a question of law that is reviewed de novo. *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 578; 808 NW2d 578 (2011). "A governmental agency is immune from tort liability when performing a governmental function unless a statutory exception applies." *Id.* "A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact." *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995). When the opposing party provides mere conclusions without supporting its position with underlying foundation, summary disposition in favor of the moving party is proper. See *Rose v Nat'l Auction Group*, 466 Mich 453, 470; 646 NW2d 455 (2002).

The trial court erred by denying defendant's motion for summary disposition. In *Stefan v White*, 76 Mich App 654, 655-657; 257 NW2d 206 (1977), the plaintiff was injured when she slipped and fell in the home of the defendant, a relative. Although the plaintiff's complaint identified a metal strip on the door slip as the cause of the fall, in her deposition, plaintiff could not identify what caused her to fall, indicating only that she "just went down." *Id.* To oppose the motion for summary disposition, the plaintiff's husband submitted an affidavit opining that the cause of the fall was the metal strip. *Id.* at 657-658. This Court held that the mere occurrence of the fall was insufficient to raise an inference of negligence, and the plaintiff's deposition testimony did not create an issue of fact. *Id.* at 661. We further held that the affidavit by the plaintiff's husband did not raise a genuine issue of material fact, but constituted only speculation and conjecture. Indeed, the plaintiff's husband did not observe the fall, but offered a possible cause with no evidence linking the strip to the fall. *Id.* at 661-662.

In the present case, plaintiff, her husband, and the neighbor attributed the cause of plaintiff's fall to an uneven sidewalk. However, these witnesses did not testify that they observed that a defect in the sidewalk was the *cause* of plaintiff's fall. Rather, the men indicated that they saw that plaintiff "went down." None of the witnesses indicated that they observed plaintiff's foot or shoe become lodged in a sidewalk crevice that caused her to fall over. Rather, the testimony of the witnesses only identified the location of the fall and then surmised that an uneven elevation caused the fall. Pursuant to *Stefan*, 76 Mich App at 661-662, this testimony is

³ Coleman identified the location of the fall as near the curb of the street. Although plaintiff's husband testified that a neighbor, Quincy Franklin, ran to plaintiff's aid, Franklin did not recall running to her at the time of his deposition. At the hospital, the triage nurse recorded that plaintiff's injuries were caused by an assault by a family member. For purposes of deciding this motion, we presume that the accident occurred as indicated by plaintiff.

insufficient to create an issue of fact regarding causation, but rather constitutes mere speculation and conjecture. See also *Cloverleaf Car Co*, 213 Mich App at 192-193.⁴

Reversed and remanded for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction. Defendant, the prevailing party, may tax costs. MCR 7.219.

/s/ / Kurtis T. Wilder
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto

In light of our holding, we need not address the challenge to the notice requirements of MCL 691.1404.