

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS WILLIAMS,

Plaintiff-Appellant,

UNPUBLISHED
October 22, 2026
8:55 AM

v

CREEKSIDE HURON SHORES, LLC, and
CREEKSIDE COMMUNITIES, LLC,

No. 375121
Sanilac Circuit Court
LC No. 23-040295-NO

Defendants-Appellees.

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

Plaintiff, Thomas Williams, fell on three occasions while walking from his vehicle to his manufactured home located on a lot he leased from defendant Creekside Huron Shores, LLC (Huron Shores). He filed this action against Huron Shores and defendant Creekside Communities, LLC (Creekside), the company that Huron Shores retained to maintain its property, alleging common-law negligence and violation of MCL 554.139 and MCL 125.536. Williams appeals by right the trial court’s order granting summary disposition in favor of Huron Shores and Creekside. He also challenges the trial court’s order denying his motion for reconsideration. Because genuine issues of material fact exist regarding Williams’s common-law negligence claims, we reverse the trial court’s orders in part and remand for further proceedings.

I. FACTUAL BACKGROUND

Williams lived in a manufactured home on a lot he leased from Huron Shores in its manufactured housing community. The lot included a walkway that led from the community sidewalk to Williams’s home situated on the lot. The walkway abutted the sidewalk in a “T” formation. The walkway was not level with the community sidewalk, which Williams asserted had sunk below the level of the walkway, creating a trip hazard. According to Williams, the sidewalk had sunk before he moved onto the lot. Williams estimated the height differential between the sidewalk and walkway to be approximately two inches on one side of the walkway and one inch on the other side.

Williams's first fall occurred on June 21, 2023. He went to the store to buy groceries and tripped on the raised walkway after he returned and attempted to carry the groceries to his home. He fell to the ground and treated his injuries with ice and heat that night. The following day, he drove himself to the hospital because he was in severe pain when he awoke. He was advised to follow up with his doctors. Williams tripped on the raised edge of the walkway a second time on July 17, 2023. He fell to the ground and landed on his right wrist. Four days later, he tripped and fell a third time because of the same condition.

Williams filed a complaint against Huron Shores. Thereafter, he filed an amended complaint adding as a defendant Creekside, the maintenance company Huron Shores hired to maintain the manufactured housing community. Williams asserted negligence claims against both defendants. He alleged that Huron Shores failed to maintain the sidewalk in a careful and prudent manner, contrary to MCL 554.139, MCL 125.536, and the common law. Against Creekside, Williams alleged that it failed to maintain the community sidewalks in a reasonable and nonnegligent manner in accordance with its contract with Huron Shores.

Defendants moved for summary disposition, arguing that MCL 125.536 was inapplicable because it applied to dwellings, and Williams's falls did not occur in a dwelling. Defendants maintained that MCL 554.139 was also inapplicable because Williams's one-year lease had expired by the time he fell, and he remained on the premises as a month-to-month tenant. Defendants asserted that, as stated in the lease agreement, Williams assumed the responsibilities set forth in MCL 554.139 after expiration of the lease, including maintaining and repairing the intersection of the sidewalk and walkway. Regarding Williams's common-law claims, defendants asserted that the height differential between the sidewalk and walkway was less than one inch as established by their expert, Dr. Justin Waxman, and photos that Williams took after he fell. Defendants argued that the duty to repair the sidewalk should not be greater than that of municipalities "which are clearly more funded." They maintained that, under MCL 691.1402a, a municipality is entitled to governmental immunity if a height differential is less than two inches, and Williams has not established a vertical discontinuity of two inches or more.

Williams did not respond to defendants' motion, which the trial court granted after dispensing with oral argument. The court determined that MCL 125.536 was inapplicable because it does not apply to private dwellings in a city, village, or township with a population less than 100,000. Regarding MCL 554.139, the court noted that Williams failed to specify in his amended complaint whether he alleged violation of MCL 554.139(1)(a) or (b). The court determined that MCL 554.139(1)(b) was inapplicable because that section does not apply to sidewalks located in common areas. The court also determined that the sidewalk was not unfit for its intended use as stated in MCL 554.139(1)(a) because the purpose of a sidewalk is for walking on it and providing access to the areas connected to it. The court noted that "[t]he statute does not require a lessor to maintain a sidewalk in ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain the sidewalk in a condition that renders it fit for use as a sidewalk." The court concluded that the vertical height discontinuity was approximately 1.4 inches and did not render the sidewalk unfit for its intended use. The court also reasoned that Williams had failed to respond to defendants' motion and provide documentary evidence establishing a genuine issue for trial as required under MCR 2.116(G)(4).

The trial court next addressed Williams's common-law negligence claims, stating:

The Defendants argue that the Plaintiff cannot show a breach of a duty owed to him as an invitee. Furthermore, the Defendants argue that a private landowner should not be held to a higher standard than a municipality for purposes of a vertical height discontinuity (less than 1.5” in this case vs. 2.0” for a municipality) related to a sidewalk. MCL 600.1402a. The Defendants’ arguments—especially those related to MCL 600.1402a—are persuasive to this Court.

Further, the court again recognized that Williams had failed to respond to defendants’ motion. The court therefore granted the motion under MCR 2.116(C)(10) and dismissed Williams’s claims with prejudice.

Williams moved for reconsideration. He argued that he failed to respond to defendants’ motion for summary disposition because he erroneously believed the hearing on the motion had been adjourned. Substantively, he conceded that MCL 125.536 and MCL 554.139(1)(b) were inapplicable but argued that defendants failed to maintain the sidewalk in a condition fit for its intended purpose as set forth in MCL 554.139(1)(a). He maintained that the height differential was a factual issue because his photos indicated a difference of approximately two inches, which was greater than the height differential asserted by Dr. Waxman. Williams denied that the lease agreement delegated to him, as a holdover tenant, the duty to keep his premises in reasonable repair, but asserted that even if it did, he fell because of a problem with the community sidewalk in the common area and not because of a condition on his premises. Regarding his common-law claims, Williams asserted that the two-inch rule applicable to municipalities did not apply to private landowners.

The trial court denied the motion. The court noted that it did not enter the order granting defendants’ motion for summary disposition until after Williams’s response to the motion was due, but Williams failed to file a response. The court indicated that it then decided the matter based on the evidence that had been presented and based in part on Williams’s failure to respond to defendants’ motion. The court stated that Williams did not seek reconsideration of the court’s decision but instead wished to respond to defendants’ motion “through the use of a motion for reconsideration.” Accordingly, the court denied Williams’s motion. This appeal followed.

II. STANDARDS OF REVIEW

We review de novo a trial court’s decision on a motion for summary disposition. *Houston v Mint Group, LLC*, 335 Mich App 545, 557; 968 NW2d 9 (2021). When deciding a motion under MCR 2.116(C)(10), the trial court must consider the affidavits, deposition testimony, and other documentary evidence that the parties submit. *Anderson v Transdev Servs, Inc*, 341 Mich App 501, 506; 991 NW2d 230 (2022). Summary disposition is appropriate if the evidence, viewed in the light most favorable to the nonmoving party, establishes that there is no genuine issue of material fact for trial. *Id.* at 507. “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Id.* (quotation marks and citation omitted). We review for an abuse of discretion a trial court’s decision on a motion for reconsideration. *Farm Bureau Ins Co v TNT Equip, Inc*, 328 Mich App 667, 672; 939 NW2d 738 (2019). “A trial court abuses its discretion if it chooses an outcome outside the range of principled outcomes.” *Id.*

III. ANALYSIS

A. MCL 554.139(1)(a)

Williams argues the trial court erred by determining that no material factual dispute exists regarding whether Huron Shores failed to maintain the sidewalk in a condition that rendered it fit for its intended use under MCL 554.139(1)(a). “MCL 554.139 provides a specific protection to lessees and licensees of residential property in *addition* to any protection provided by the common law.” *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). “The statutory protection under MCL 554.139(1) arises from the existence of a residential lease and consequently becomes a statutorily mandated term of such lease.”¹ *Id.* MCL 554.139 states, in relevant part:

(1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties.

Our Supreme Court has recognized that a “common area” is “ ‘the portion of demised premises used in common by tenants over which landlord retains control (*e.g.* hallways, stairs) and hence for whose condition he is liable, as contrasted with areas of which tenant has exclusive possession.’ ” *Allison*, 481 Mich at 427, quoting Black’s Law Dictionary (6th ed), p 275. The parties do not dispute that the sidewalk at issue in this case was a common area.

Under MCL 554.139(1)(a), a lessor has a duty to maintain a common area in a condition “ ‘fit for the use intended by the parties.’ ” *Id.* at 429, quoting MCL 554.139(1)(a). “The statute does not require any level of fitness beyond what is necessary to allow tenants to use the [common area] as the parties intended.” *Id.* at 431. The statute also does not require a lessor to maintain a common area “in an ideal condition.” *Id.* at 430. “[T]he appropriate inquiry under MCL 554.139(1)(a) remains whether the common area in question is *fit* (i.e., adapted, suited, or appropriate) for the use intended by the parties.” *Bowerman v Red Oak Mgt Co, Inc*, ___ Mich ___ ; ___ NW3d ___ (2026) (Docket No. 167718); slip op at 18.

The parties ostensibly intended the sidewalk at issue to be used for walking and providing access to the walkway located on Williams’s lot. The fact that the sidewalk had sunk to a degree, creating a height differential between the sidewalk and walkway, did not render it unfit for this use. As the trial court recognized, Williams had used the sidewalk without incident for more than one year before he fell. Williams testified that the sidewalk had sunk before he moved onto his lot. When asked if it sank more after he moved into his home or whether he noticed the height

¹ Williams and Huron Shores entered into a one-year lease agreement that had expired at the time that Williams fell. The lease agreement provided, however, that its terms would carry over to Williams’s month-to-month tenancy if he continued to reside on the premises after the lease expired. The lease agreement stated, “Upon the expiration of the Lease, unless Tenant requests a new written Lease, the tenancy will be on a month-to-month basis, subject to all of the conditions, provisions and obligations of this lease agreement with the exception of terms regarding the amount of rent and other charges.”

differential getting worse, he responded, “I can’t say that.” Yet, Williams was able to use the sidewalk without incident for approximately 15 months before his first fall. Accordingly, although the parties disagree regarding the extent of the height differential, the trial court properly determined that the sidewalk was not unfit for the use intended by the parties.

B. COMMON-LAW NEGLIGENCE

Williams also argues that the trial court erred by relying on MCL 691.1402a and determining that a private landowner should not be held to a higher standard than a municipality. MCL 691.1402a “impose[s] an affirmative duty on municipalities to maintain all public sidewalks in reasonable repair.” *Mann v Detroit*, ___ Mich ___, ___; 21 NW3d 451, 452 (2025). MCL 691.1402a is known as the “sidewalk exception” to governmental immunity. *Buhl v Oak Park*, 507 Mich 236, 240; 968 NW2d 348 (2021). As stated in MCL 691.1402a(3), a municipal corporation “is presumed to have maintained [a] sidewalk in reasonable repair.” That provision further states:

This presumption may only be rebutted by evidence of facts showing that a proximate cause of the injury was 1 or both of the following:

- (a) A vertical discontinuity defect of 2 inches or more in the sidewalk.
- (b) A dangerous condition in the sidewalk itself of a particular character other than solely a vertical discontinuity.

Defendants argued in their motion for summary disposition that a private landowner should not be held to a higher standard than a municipality. The trial court agreed and opined that the vertical height discontinuity was “less than 1.5” in this case vs. 2.0” for a municipality.”

The trial court erred by accepting as undisputed Dr. Waxman’s opinion that the vertical height differential was not greater than 1.4 inches. Williams testified that the height discontinuity was approximately 1.5 to 2 inches, and he provided photos of the discontinuity alongside a yardstick that measured the height difference at approximately two inches. Therefore, there existed a factual dispute regarding the height discontinuity, rendering summary disposition inappropriate. See *Moraccini v Sterling Hts*, 296 Mich App 387, 391; 822 NW2d 799 (2012) (“[W]hen a relevant factual dispute does exist, summary disposition is not appropriate.”).

The trial court also erred by determining that defendants were entitled to summary disposition if the height differential was less than two inches. We recognize that the trial court decided defendants’ motion for summary disposition based in part on the fact that Williams failed to respond to the motion. The court indicated it relied on MCR 2.116(G)(4), which states, in relevant part:

When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. *If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.* [Emphasis added.]

Although the trial court properly noted that Williams was required to present documentary evidence in opposition to defendants' motion, the court erred by determining that Williams's failure to respond to the motion necessarily warranted granting the motion. MCR 2.116(G)(4) states that judgment, "if appropriate," shall be entered if a party fails to respond. Summary disposition under MCR 2.116(C)(10) is appropriate if "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A "plaintiff's failure to provide . . . a response may render [the] defendants' arguments unopposed, but it does not necessarily render them successful; instead, the trial court—and this Court—must still review the legal arguments and the evidence properly submitted in support to determine if they are sufficient in themselves to show entitlement to judgment as a matter of law." *Bowen v Beaumont Hosp Farmington*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket No. 374271); slip op at 8 n 7. The rebuttable presumption of reasonable repair for municipal vertical discontinuities less than two inches, as stated in MCL 691.1402a(3)(a), did not entitle defendants to judgment as a matter of law. Moreover, it cannot be said that there exists no genuine issue of material fact that a private landowner should not be held to a higher standard than a municipality. Because reasonable minds might differ in that regard, a genuine issue of material fact exists. *Anderson*, 341 Mich App at 507.

Further, MCL 691.1402a pertains to a municipality's rights and obligations regarding premises liability involving sidewalks. See *Buhl*, 507 Mich at 242-243. A premises-liability claim is predicated on the defendant's possession and control of the land. *Bowerman*, ___ Mich at ___; slip op at 9. Creekside did not have possession or control of the sidewalk, but rather, was hired by Huron Shores to perform maintenance on the property. Williams's negligence claim against Creekside alleged that Creekside failed to perform its maintenance contract in a nonnegligent manner. Williams did not allege a premises-liability claim against Creekside and could not have done so given that Creekside did not have possession and control over the property. Defendants' motion for summary disposition failed to assert a defense applicable to Williams's claim against Creekside. Because Williams alleged different theories of liability against Huron Shores and Creekside, the trial court erred by granting summary disposition in favor of Creekside based on premises-liability principles.

IV. CONCLUSION

For the reasons discussed, we reverse in part the trial court's orders granting defendants' motion for summary disposition and denying Williams's motion for reconsideration. Despite Williams's failure to respond to defendants' motion, defendants did not establish that they were entitled to judgment as a matter of law regarding Williams's common-law negligence claims, and the trial court erred by determining that they were so entitled. We therefore reverse the trial court's orders with respect to those claims and remand for further proceedings.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Sima G. Patel
/s/ Michael J. Kelly
/s/ Kristina Robinson Garrett