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STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE MIKE,

Plaintiff-Appellant,

v

PARSCH, INC.,

Defendant-Appellee.

UNPUBLISHED
September 09, 2026
11:00 AM

No. 375727
Lapeer Circuit Court
LC No. 23-056801-NO

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant under MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. FACTUAL BACKGROUND

Plaintiff worked as a rural mail carrier for the United States Postal Service. On November 30, 2020, her right-hand-drive Jeep Wrangler malfunctioned while she was completing her mail route. She drove it to defendant's automotive business. Plaintiff was familiar with the business because she stopped there regularly. Defendant's employee, Lucas Parsch, replaced a broken belt, and plaintiff left the premises. The problem recurred soon after, and plaintiff returned to defendant's business. Parsch or another mechanic then determined that the Jeep's crankshaft was cracked and that the vehicle would need to be towed to a dealership.

Because plaintiff still had mail to deliver, she contacted her supervisor, Bronze Wadsworth. Wadsworth arranged for another postal employee to bring a replacement mail vehicle so plaintiff could transfer the mail from her Jeep and complete her route. According to plaintiff, the replacement vehicle was backed into the west driveway, approximately 20 to 30 steps from the garage where her Jeep was located. Parsch recalled the replacement vehicle being much closer to the garage, approximately 10 to 15 feet from plaintiff's Jeep.

Plaintiff, Wadsworth, and another postal employee first transferred the parcels from plaintiff's Jeep to the replacement vehicle. Plaintiff then transferred the sorted mail herself so that it would remain in delivery order. During her second trip, plaintiff stepped onto the side step of

the replacement vehicle, placed a bundle of mail on a tray, and stepped backward with her right foot. She testified that her foot landed in gravel inside a pothole, slid backward, struck the back of the hole, and caused her ankle to roll. Plaintiff fell backward, landing on her left wrist and backside.

Plaintiff described the condition as a hole approximately the size of her foot and three to four inches deep, with gravel inside and pavement around it. She did not see the pothole before stepping into it, and there was no snow or ice on the ground. After the fall, Wadsworth helped plaintiff up, kicked the gravel in the hole with his foot, and asked whether that was where she fell. Plaintiff nodded yes. Plaintiff did not photograph the pothole, did not know whether anyone else photographed it, and was unsure whether there were other potholes nearby.

Parsch did not witness the fall. He testified that he did not inspect the area afterward and had not seen any potholes, despite walking over the general area approximately 100 times each day. Both parties relied on a May 2019 Google Street View image of the west driveway. Plaintiff argued that the image showed discoloration at the location where she fell. Defendant argued that the image did not depict the pothole plaintiff described.

Plaintiff later filed this premises-liability action. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff could not establish actual or constructive notice of the alleged pothole. Defendant emphasized that no photograph depicted the pothole, that no witness testified that defendant had previously observed or received a report about the pothole, and that plaintiff had no evidence showing when the condition arose.

Plaintiff responded that constructive notice could be inferred from the character of the defect. She maintained that potholes develop through deterioration rather than appearing instantaneously. She pointed out that the May 2019 image showed discoloration at the fall location and contended that Parsch's testimony about regularly walking through the area supported an inference that defendant should have discovered the condition.

The trial court granted defendant's motion. The court concluded that plaintiff had not presented evidence showing when the pothole arose or how long it had existed before her fall. The court also relied on Parsch's testimony that he regularly crossed the general area without seeing a pothole. The court therefore determined that plaintiff failed to create a genuine issue of material fact regarding notice.

Plaintiff moved for reconsideration, arguing that the trial court had improperly weighed Parsch's testimony against hers and made credibility determinations when deciding a motion under MCR 2.116(C)(10). The trial court denied reconsideration, explaining that its ruling did not rest on a credibility determination, but on plaintiff's inability to offer evidence that defendant had notice of the pothole's existence.

Plaintiff timely filed a claim of appeal. This Court initially dismissed the claim of appeal without prejudice for lack of jurisdiction, stating that the April 8, 2025 opinion and order was not "a final order as defined under MCR 7.202(6)." *Mike v Parsch, Inc*, unpublished order of the Court of Appeals, entered June 3, 2025 (Docket No. 375727). Plaintiff moved for reconsideration, and this Court granted reconsideration on July 3, 2025, allowing the appeal to proceed. *Mike v*

Parsch, Inc, unpublished order of the Court of Appeals, entered July 3, 2025 (Docket No. 375727). We now address plaintiff's issues on appeal.

II. ANALYSIS

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion under MCR 2.116(C)(10) "tests the factual sufficiency of a claim." *Id*. at 160. When deciding a motion under MCR 2.116(C)(10), a court considers the evidence submitted by the parties in the light most favorable to the nonmoving party and draws all reasonable inferences in that party's favor. *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211 (2010). Summary disposition is appropriate when the record presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

A genuine issue of material fact exists when, "giving the benefit of reasonable doubt to the opposing party," the record "leave[s] open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The court may not weigh the evidence, make findings of fact, or determine witness credibility when deciding a motion under MCR 2.116(C)(10). *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 480; 776 NW2d 398 (2009). However, the nonmoving party must come forward with substantively admissible evidence creating a genuine factual dispute, rather than relying on conjecture or speculation. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999).

B. IMPROPER EVALUATION OF EVIDENCE

Plaintiff first argues that the trial court considered the evidence in the light most favorable to defendant and made improper factual findings when granting summary disposition. We disagree.

Plaintiff relies on the conflict between her testimony and Parsch's testimony concerning the location of the replacement vehicle and the area where plaintiff fell. According to plaintiff, the replacement vehicle was parked approximately 20 to 30 steps from the garage, near the west driveway, and she fell after stepping backward from that vehicle. Parsch, who did not witness the fall, believed that the vehicle and the place where plaintiff fell were much closer to the garage. Plaintiff maintains that the trial court resolved this conflict in Parsch's favor when it referred to his testimony that he crossed the general area approximately 100 times each day without seeing a pothole.

A court deciding a motion under MCR 2.116(C)(10) may not determine which witness offered the more credible account. *Innovative Adult Foster Care*, 285 Mich App at 480. The trial court therefore should not have relied on Parsch's testimony that he regularly traversed the area without seeing a pothole to the extent that his testimony depended on his disputed identification of the fall location.

Nevertheless, any error does not require reversal. We review the trial court's decision de novo. *El-Khalil*, 504 Mich at 159. In doing so, we disregard Parsch's competing recollection of

the fall location and accept plaintiff's testimony concerning the pothole's existence, dimensions, composition, and location. We also accept that plaintiff stepped into a foot-sized, three-to-four-inch-deep, gravel-filled pothole at the location she identified. Even under that version of the events, however, plaintiff's evidence does not establish when the condition arose or otherwise permit a reasonable inference that defendant had actual or constructive notice of it. Thus, the disputed testimony concerning where plaintiff fell is not material to the basis for summary disposition. *West*, 469 Mich at 183. Plaintiff's claim fails not because Parsch's account is more credible, but because plaintiff's own evidence, accepted as true, is insufficient to establish the notice element. As discussed below, plaintiff has not demonstrated reversible error.

C. NOTICE OF DEFECT

Plaintiff next argues that the evidence, viewed in her favor, created a genuine issue of material fact regarding whether defendant had actual or constructive notice of the alleged pothole. We disagree.

A premises-liability plaintiff must establish that the premises possessor had actual or constructive notice of the dangerous condition. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 8; 890 NW2d 344 (2016). Constructive notice requires evidence "that the hazard was of such a character, or had existed for a sufficient time, that a reasonable premises possessor would have discovered it." *Id*. at 11-12. Constructive notice may arise "not only from the passage of time itself, but also from the type of condition involved, or from a combination of the two elements." *Kroll v Katz*, 374 Mich 364, 372; 132 NW2d 27 (1965). But a plaintiff must present evidence permitting a reasonable inference, not "mere speculation or conjecture." *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994).

Plaintiff presented no evidence that defendant actually knew of the alleged pothole before she fell. No witness testified that the condition had previously been reported or observed, and the record contains no pre-accident complaint, photograph, or repair connected to the alleged pothole. Plaintiff therefore failed to create a genuine issue of material fact regarding actual notice.

Plaintiff likewise failed to create a genuine issue regarding constructive notice. Accepting her testimony in full, the evidence establishes that a foot-sized, three-to-four-inch-deep, gravel-filled hole existed when she stepped backward from the replacement mail vehicle. Her testimony does not establish when the hole formed, whether it had changed over time, or whether its appearance reflected prolonged deterioration. Plaintiff did not identify a physical characteristic, such as weathering or deterioration, from which a fact-finder could reasonably determine the condition's age.

The presence of gravel does not permit a different conclusion. Gravel inside the hole could be consistent with an earlier attempt to repair or fill the condition. But plaintiff presented no evidence identifying who placed the gravel, when it was placed, or whether it was deposited as part of a repair. The gravel could also have accumulated through ordinary use of the driveway or from another source. Concluding that defendant previously attempted to repair the pothole would require selecting one possible explanation without evidence supporting that choice. Such an inference would be speculative. *Skinner*, 445 Mich at 164.

Wadsworth's conduct immediately after the accident likewise does not supply the missing evidence. Plaintiff testified that Wadsworth kicked the gravel and confirmed that she had fallen at that location. That testimony supports plaintiff's account that a gravel-filled depression existed at the time of the fall, but it provides no information concerning when the condition arose or how long it had been present.

The photographs also do not create a factual question concerning notice. Plaintiff contends that the May 2019 image shows discoloration in the pavement at the location she identified. Even assuming that it does, no testimony or other evidence connects that discoloration to the foot-sized, three-to-four-inch-deep, gravel-filled pothole plaintiff encountered approximately 18 months later. Inferring that the discoloration and the alleged pothole were the same condition would therefore require speculation.

Plaintiff relies on *Basehore v Short*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2024 (Docket No. 366596), *Thompson v Gibson (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued July 24, 2018 (Docket No. 333755), and *Mancill v Trio Inv Props, LLC*, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2025 (Docket No. 370890).[1] Those decisions do not alter the result.

Basehore recognized the general principle that constructive notice may be inferred when a condition's character or duration would have led a reasonable premises possessor to discover it. See *Basehore*, unpub op at 8. It discussed examples in which evidence linked a condition to an appreciable period, including produce that remained on a store floor for a known time, a hole in a rug located in a frequently traversed doorway, and pavement defects shown to have existed for months. *Id*. Here, by contrast, plaintiff presented no evidence tying the alleged pothole to any identifiable period before her accident. Defendant's opportunity to discover the pothole cannot establish constructive notice without evidence that the pothole existed during that opportunity.

Thompson similarly recognized that a jury may determine constructive notice when the evidence concerning a defect's physical condition permits an inference that the defect developed over time. See *Thompson*, unpub op at 6. The dangerous condition there involved a defective deck railing whose condition and surrounding evidence permitted a factual determination concerning whether the defect had existed long enough to be discovered. *Id*., unpub op at 5-6. In this case, plaintiff described the dimensions and contents of the pothole but presented no evidence that those characteristics revealed its age. The general proposition that potholes ordinarily develop through deterioration does not establish how long this particular pothole existed.

Mancill is also distinguishable. There, the plaintiff testified that she had informed the defendant landlord approximately two years before the accident that the porch needed repair or treatment. See *Mancill*, unpub op at 4. The defendant responded by power-washing and painting the problem area. *Id*. Thus, the record contained affirmative evidence that the defendant had been alerted to the condition long before the plaintiff's injury. Plaintiff presented no comparable

[1] Although unpublished opinions are not precedentially binding under the rule of stare decisis, MCR 7.215(C)(1), they may be considered for their persuasive value.

evidence here. No witness reported the alleged pothole to defendant before the accident, and no evidence showed that defendant previously treated or repaired it.

Plaintiff's reliance on the general rule that the character of a defect can support constructive notice is otherwise unavailing. In *Siegel v Detroit City Ice & Fuel Co*, 324 Mich 205, 211-212; 36 NW2d 719 (1949), the record involved a worn hole approximately seven or eight feet wide and 18 inches deep, whose developed physical character supported an inference that it had existed for an appreciable period. *Goldsmith v Cody*, 351 Mich 380, 389; 88 NW2d 268 (1958), distinguished that type of developed physical defect from a condition whose duration could not be determined. Here, plaintiff provided estimated dimensions and testified that gravel was present, but she offered no evidence of deterioration or another characteristic revealing the hole's age.

Finally, Parsch's testimony that he walked through the general area approximately 100 times each day does not fill the evidentiary gap. Plaintiff relies on that testimony to argue that defendant had repeated opportunities to discover the condition. But an opportunity to discover a defect does not establish constructive notice, absent evidence that the defect existed while those opportunities occurred. See *Lowrey*, 500 Mich at 11-12; *Kroll*, 374 Mich at 372. And because plaintiff and Parsch identified different fall locations, we do not rely on Parsch's testimony that he did not observe a pothole. Plaintiff's claim fails because the evidence she presented does not permit a reasonable inference concerning the condition's duration.

Defendant met its initial burden by identifying the absence of evidence supporting the notice element, and plaintiff failed to produce evidence creating a genuine factual dispute. *Lowrey*, 500 Mich at 9-12. Accordingly, the trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Anica Letica
/s/ Michelle M. Rick
/s/ Kristina Robinson Garrett