STATE OF MICHIGAN

COURT OF APPEALS

JOANN FINKBEINER, Plaintiff-Appellee, v TOWNSHIP OF CLINTON, Defendant, and BAKER COLLEGE OF CLINTON TOWNSHIP, Defendant-Appellant.	UNPUBLISHED May 10, 2011 No. 297113 Macomb Circuit Court LC No. 2008-005383-NO

Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

In this negligence action, plaintiff alleged that she tripped and fell on an uneven sidewalk in front of defendant Baker College of Clinton Township, injuring her left leg, foot, and ankle.[1] Following a jury trial, a verdict was entered in favor of plaintiff against defendant. Defendant appeals as of right the trial court's order denying defendant's motion for summary disposition and its judgment entered in accordance with the jury's verdict. Because defendant was entitled to summary disposition in its favor, we reverse the trial court's summary disposition decision and the jury verdict, and remand for entry of an order granting summary disposition in defendant's favor and dismissing the case in its entirety.

On appeal, defendant argues that the trial court erred in denying its motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) because it did not owe plaintiff a duty under Clinton Township's ordinance requiring it to maintain and repair abutting sidewalks or the common law. We agree.

[1] Because the Township of Clinton is not a party to this appeal, reference to "defendant" in the singular refers to Baker College only.

We review de novo both a trial court's decision whether to grant summary disposition, *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008), and a trial court's determination of the existence of a duty, *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007). In a motion under MCR 2.116(C)(8), which tests the legal sufficiency of a claim by the pleadings alone, all well-pleaded factual allegations in support of the claim are accepted as true and are construed in the light most favorable to the nonmoving party. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). In a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Latham*, 480 Mich at 111. "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

To establish a claim of negligence, a plaintiff must show that (1) the defendant owed a duty to the plaintiff, (2) the defendant breached the duty, (3) causation, and (4) damages. *Henry v Dow Chem Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). In her complaint, plaintiff alleged that the sidewalk section at issue was a public right-of-way and not part of defendant's premises. Plaintiff further alleged that defendant was liable for her injuries due to its duty to maintain the sidewalk pursuant to a local ordinance. However, local ordinances imposing on a landowner an obligation to repair and maintain an abutting public sidewalk do not give rise to a private cause of action against the landowners. *Levendoski v Geisenhaver*, 375 Mich 225, 227-228; 134 NW2d 228 (1965). Therefore, the trial court erred in denying defendant's request for partial summary disposition pursuant to MCR 2.116(C)(8) in regard to plaintiff's claim that defendant owed her a legal duty under the Township's ordinance. The trial court also erred in denying defendant's request for summary disposition based upon the common law.

"A defendant's duty, for purposes of premises liability, ends with the boundaries of the premises, and an injury caused by a dangerous condition located outside those boundaries is not the legal responsibility of that defendant." *Ward v Frank's Nursery & Crafts*, 186 Mich App 120, 131; 463 NW2d 442 (1990). Thus, generally, a landowner has no duty to repair or maintain an abutting public right-of-way. *Bivens v Grand Rapids*, 443 Mich 391, 395; 505 NW2d 239 (1993).

Defendant argues, in part, that based on this Court's holding in *Figueroa v Garden City*, 169 Mich App 619, 622-623; 426 NW2d 727 (1988), plaintiff could not maintain her common law negligence claim. However, *Figueroa* did not involve premises liability but indemnification. The Court held that the city's ordinance, similar to the one at issue here, only created a public duty from which there can be no private right to recovery. *Id.* *Figueroa* does not speak to whether a landowner can nevertheless be held liable under the common law pursuant to the general rule's exceptions.

Because defendant's duty ended with the boundaries of its premises, defendant is not liable for any injury occurring outside that boundary. It is undisputed that plaintiff's injury was incurred due to a trip and fall on the public sidewalk. While "an owner or occupier may be liable in negligence for affirmative acts done on adjacent public land," *Ward*, 186 Mich App at 132, plaintiff's allegations concerning her trip and fall focus upon the *failure* of defendant to take certain actions with respect to the sidewalk—not on any *affirmative* act performed by defendant on the public sidewalk. Viewed in the light most favorable to plaintiff, then, there is no genuine

issue of material fact that plaintiff's injury was caused by a condition existing outside the boundaries of defendant's property and for which defendant had no common law duty to repair or maintain. Summary disposition was therefore appropriate in defendant's favor on plaintiff's claim of negligence premised upon the common law and the trial court erred in denying defendant's motion. This being true, we need not consider defendant's remaining arguments on appeal.

Reversed and remanded for entry of an order granting summary disposition in defendant's favor and dismissing the case in its entirety. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Joel P. Hoekstra
/s/ Donald S. Owens