

STATE OF MICHIGAN
COURT OF APPEALS

JOANNA HARPER,

Plaintiff/Appellant/Cross-Appellee,

and

CHRISTOPHER HARPER, DWIGHT HARPER,
and JAMAL HARPER,

Plaintiffs,

v

LAKESHORE PRODUCTS, INC., and
ALUMIRAMP, INC.,

Defendants,

and

METRO MEDICAL EQUIPMENT, INC.,

Defendant/Appellee/Cross-Appellant.

UNPUBLISHED
February 14, 1997

No. 185860
Wayne Circuit Court
LC No. 94-404328-NO

Before: Jansen, P.J., and Reilly and E. Sosnick,* JJ.

PER CURIAM.

Plaintiff, Joanna Harper, appeals as of right from an order granting defendant, Metro Medical's, motion for summary disposition pursuant to MCR 2.116(C)(7) (claim barred because of release). We affirm.

In 1989, Metro Medical installed a wheelchair accessibility ramp at plaintiff's residence. On January 12, 1993, Metro Medical replaced the then-existing zig-zag ramp system with a straight ramp.

* Circuit judge, sitting on the Court of Appeals by assignment.

Because Metro Medical believed that the zig-zag system provided a safer means of descent from plaintiff's porch than the straight ramp, Metro Medical required plaintiff's execution of a release. Upon installation of the ramp, plaintiff executed a release. On March 17, 1993, plaintiff fell as she descended the straight ramp and the handrail broke as she attempted to break her fall. Plaintiff suffered a fractured ankle as a result. Plaintiff filed suit to recover for her personal injuries under theories of negligence and breach of warranty. The trial court granted Metro Medical's motion for summary disposition and dismissed plaintiff's claims because they were barred by the terms of the release.

On appeal, plaintiff contends that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(7) because the release was invalid. A trial court's determination of a motion for summary disposition is reviewed de novo on appeal. *Peters v Dep't of Corrections*, 215 Mich App 485; 546 NW2d 668 (1996). A motion brought under MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3). If such material is submitted, it must be considered by the court. MCR 2.116(G)(5). Here, documentary evidence was submitted by the parties, thus, like the trial court, we consider it when reviewing the motion for summary disposition. *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994).

Plaintiff alleges that the release was invalid because it was procured by way of misrepresentation and fraud, and because she signed it without reading it. The validity of a contract of release turns on the intent of the parties. To be valid, a release must be fairly and knowingly made. *Denton v Utley*, 350 Mich 332, 342; 86 NW2d 537 (1957). A release is not fairly and knowingly made if (1) the releasor was dazed, in shock, or under the influence of drugs, (2) the nature of the instrument was misrepresented, or (3) there was other fraudulent or overreaching conduct. *Paterek v 6600 Ltd*, 186 Mich App 445, 449; 465 NW2d 342 (1990). To warrant rescission or invalidation of a release, a misrepresentation must be made with the intent to mislead or deceive. *Hungerman v McCord Gasket*, 189 Mich App 675, 677; 473 NW2d 720 (1991). An innocent misrepresentation will not invalidate a release. *Id.* Further, one who signs a contract cannot seek to invalidate it on the basis that he or she did not read it or thought that its terms were different, absent a showing of fraud or mutual mistake. *Paterek, supra*, p 450. The failure to read a release agreement provides a ground for rescission only where the failure was not induced by mere carelessness, but was induced by stratagem, trick, or artifice by the parties seeking to enforce it. *Id.*

Upon review of the record, we find no evidence to show that Metro Medical intentionally or fraudulently misrepresented to plaintiff the nature of the release. At her deposition, plaintiff testified that she has a tenth grade education. She stated that she did not read the release and that she did not know what the release meant because she did not know some of the words in the release. Jeff Pankow, one of the installers, testified at his deposition that he told plaintiff that he had plaintiff sign the waiver form and that he conversed with her about two forms. In fact, the deposition testimony reveals that Metro Medical required plaintiff's execution of the release because Metro Medical believed that the zig-zag ramp provided a safer means of descent from plaintiff's porch than the requested straight ramp.

The release itself states, "I will not hold METRO MEDICAL EQUIPMENT, INC responsible for any injury to myself or anyone else while using the wheelchair ramp." Plaintiff signed the release in two separate places. She signed it on the line given for her signature and she signed it below a heading

labeled “SPECIAL NOTATION.” The special notation section reads, “I am aware that the installed ramp is not up to the A.N.S.I. code. I will assume all responsibility as a result of the forementioned.” Further, a handwritten note states, “A small section will not have rails. OK Mrs. Harper.” Plaintiff’s signature is under this handwritten note. Other deposition testimony reveals that Metro Medical disclosed the deficiencies of the replacement ramp to plaintiff. Given the circumstances surrounding plaintiff’s execution of the release, we find that the release was valid and, therefore, that the trial court properly dismissed plaintiff’s claims.

Given that the release barred plaintiff’s claims against Metro Medical, we need not address the issues raised by Metro Medical on cross-appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick