

STATE OF MICHIGAN
COURT OF APPEALS

TED T. TALICIO,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

July 27, 2001

No. 224064

Wayne Circuit Court

LC No. 99-901373-NO

Before: Wilder, P.J. and Hood and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when he tripped on a sidewalk within defendant's municipal boundaries. The sidewalk was covered by a fresh layer of snow. Plaintiff filed suit alleging that defendant negligently failed to maintain the sidewalk in a reasonably safe condition, that defendant knew or should have known of the condition of the sidewalk, and that defendant was liable under the highway exception to governmental immunity. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no genuine issue of fact existed as to whether the sidewalk was reasonably safe for public travel. Defendant supported the motion with photographs of the sidewalk and an affidavit from a city inspector, who stated that the sidewalk was in reasonable repair. At the hearing on defendant's motion plaintiff submitted a statement from a safety engineer, who asserted that the difference in height between the slabs of concrete where plaintiff fell was "significant and hazardous," and constituted the proximate cause of plaintiff's fall. The trial court granted defendant's motion, finding that plaintiff's expert's statement was unsupported by the facts, and that reasonable minds could not differ on whether the sidewalk was in reasonable repair. The court cited the fact that the statement was not notarized as an alternate ground for granting defendant's motion. Subsequently, the trial court denied plaintiff's motion for reconsideration.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The highway exception to governmental immunity requires a governmental agency having jurisdiction over a highway to maintain the highway in a condition that is reasonably safe and convenient for public travel. MCL 691.1402(1).¹ The definition of “highway” includes sidewalks. MCL 691.1401(e). A municipality is required to maintain sidewalks within its jurisdiction in a reasonably safe condition. *Figueroa v Garden City*, 169 Mich App 619, 623; 426 NW2d 727 (1988).

Plaintiff argues that the trial court erred by granting defendant’s motion for summary disposition. We disagree and affirm. A governmental agency having jurisdiction over a sidewalk is not an insurer of traveler safety. MCL 691.1402(1) requires only that the sidewalk be reasonably safe for public travel. If a sidewalk is maintained so as to be reasonably safe, liability cannot be imposed. *Wechsler v Wayne County Road Comm*, 215 Mich App 579, 594-595; 546 NW2d 690 (1996). The evidence showed that the sidewalk on which plaintiff fell was not broken or cracked, and that the difference in height between the slabs at the point where plaintiff fell was less than one inch. A party opposing a motion for summary disposition must present more than conjecture to meet the burden of producing evidence to create a genuine issue of fact. A conjecture is an explanation that is consistent with known facts, but that is not deducible from them as a reasonable inference. *Libralter Plastics, Inc v Chubb Group*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Plaintiff’s expert’s statement that the deviation in the sidewalk was “significant and hazardous” is not deducible from the evidence showing an unbroken, uncracked sidewalk with only a slight height difference between the slabs. The failure of an affidavit to be supported by underlying facts renders it insufficient to create a genuine issue of fact for purposes of defeating a motion for summary disposition brought pursuant to MCR 2.116(C)(10). *Jubenville v West End Cartage, Inc*, 163 Mich App 199, 207; 413 NW2d 705 (1987). The trial court correctly found that plaintiff’s expert’s statement was insufficient to create a genuine issue of fact. The presence of a natural accumulation of snow on a reasonably maintained sidewalk could not serve as the basis for imposition of liability. *Zielinski v Szokola*, 167 Mich App 611, 615-617; 423 NW2d 289 (1988), overruled in part on other grounds in *Robinson v Detroit (On Remand)*, 231 Mich App 361; 586 NW2d 116 (1998). Summary disposition was proper.

Plaintiff’s expert’s affidavit was not verified as required by MCR 2.113(A) and was not submitted in a timely fashion. MCR 2.119(C)(1)(b). The trial court cited the lack of verification as an alternate ground for summary disposition. We agree, and also affirm on the basis that plaintiff did not sustain the burden of opposing defendant’s motion with sufficient documentary

¹ MCL 691.1402a(2), which provides that the existence of a discontinuity defect of less than two inches creates a rebuttable inference that the municipality maintained the sidewalk in reasonable repair, is inapplicable to this case because it was enacted after this cause of action arose. 1999 PA 205, enacting § 1, provides: “Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply to a cause of action arising on or after the effective date of this amendatory act [i.e., December 21, 1999].”

evidence. MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin