

STATE OF MICHIGAN  
COURT OF APPEALS

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RENEE FELTNER,

Plaintiff-Appellee,

v

CITY OF GRAND RAPIDS,

Defendant-Appellant.

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UNPUBLISHED

June 26, 2014

No. 314289

Kent Circuit Court

LC No. 11-009139-NO

Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant City of Grand Rapids appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(7) in this case involving an alleged sidewalk defect. The trial court also denied the city's motion for reconsideration. For the reasons set forth below, we reverse the trial court and remand this case for the trial court's consideration of defendant's motion.

I. FACTS

Plaintiff states she slipped on leaves and fell while walking on a sidewalk near 2147 Stafford Street, SW, in Grand Rapids on October 25, 2009. She sustained numerous injuries to her left leg and knee, which required surgery. Plaintiff thereafter filed this lawsuit. Upon the completion of discovery, the city moved the trial court for summary disposition under MCR 2.116(C)(7) on the basis of governmental immunity. The trial court denied the motion on the sole basis it was untimely under its scheduling order.

II. TIMELINESS OF MOTION FOR SUMMARY DISPOSITION

The city argues on appeal the trial court erred because, pursuant to MCR 2.116(D)(3), a motion for summary disposition based on governmental immunity can never be untimely. We agree. We review a trial court's decision to decline to entertain motions filed after the deadline set forth in a scheduling order for an abuse of discretion. *Kemerko Clawson, LLC v RXIV Inc*, 269 Mich App 347, 349; 711 NW2d 801 (2005). An abuse of discretion occurs when the trial court selects a decision outside the range of reasonable and principled outcomes. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). Questions regarding the interpretation and application of court rules are questions of law, which we review de novo. *Lamkin v Engram*, 295 Mich App 701, 707; 815 NW2d 793 (2012). When interpreting a court rule we start with the

language of the rule, if the language is “clear and unambiguous, then no further judicial interpretation is required or allowed.” *Wilcoxon v Wayne Co Neighborhood Legal Servs*, 252 Mich App 549, 553; 652 NW2d 851 (2002). The rule should not be construed so as to make any of its parts mere surplusage or nugatory. *McClellan v Collar*, 240 Mich App 403, 410; 613 NW2d 729 (2000).

MCR 2.116 governs summary disposition motions and authorizes a party to move for summary disposition on all or part of a claim on various grounds, listed in subrule (C). MCR 2.116(B)(1). Subrule (D) describes the time at which each ground in subrule (C) must be raised in order to be considered. MCR 2.116(D)(3) provides:

(3) The grounds listed in subrule (C)(4) *and the ground of governmental immunity* may be raised at any time, *regardless of whether the motion is filed after the expiration of the period in which to file dispositive motions under a scheduling order entered pursuant to MCR 2.401*. [Emphasis added.]

The plain language of MCR 2.116(D)(3) provides the trial court does not have discretion to reject motions based on governmental immunity even if they are filed after the deadline set forth in the scheduling order. As the staff comments to the rule make clear, such a reading comports with longstanding precedent holding governmental immunity may be raised at any time. See *Mack v Detroit*, 467 Mich 186, 197 n 13; 649 NW2d 47 (2002). To read the rule any other way would be to render the language in subrule (D)(3) nugatory. The trial court erred when it refused to consider defendant’s motion.

We remand to the trial court for consideration of defendant’s motion regarding governmental immunity.

/s/ Amy Ronayne Krause  
/s/ Joel P. Hoekstra  
/s/ William C. Whitbeck