Circuit Court for Baltimore City
Case No.: 24-C-16-005327

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1811

September Term, 2017

KATRINA MEGGINSON

v.

THE CITY OF BALTIMORE AND THE MAYOR & CITY COUNCIL OF BALTIMORE

Nazarian,
Reed,
Fader,

JJ.

Opinion by Nazarian, J.

Filed: December 19, 2018

Katrina Megginson was walking on the north side of West North Avenue in Baltimore when a water meter cover "flipped up," and her left leg fell into the resulting hole. She sued the City of Baltimore, the Mayor and City Council of Baltimore (collectively, "the City"), and Monumental Paving & Excavating, Inc. ("Monumental") and alleged negligence. After some discovery, the City and Monumental moved for summary judgment. The Circuit Court for Baltimore City granted both motions after finding that Ms. Megginson failed to "produce admissible evidence to show a genuine dispute of material fact." Ms. Megginson argues on appeal that the circuit court erred in disregarding a document it found inauthentic, and that the record created triable issues about whether the City and Monumental had notice of the defect. We affirm.

I. BACKGROUND

Ms. Megginson was injured on July 26, 2014 and filed a timely claim with the City of Baltimore. The City's Central Bureau of Investigation responded by letter on May 4, 2016, and took the position that "no wrongful conduct was performed by the City of Baltimore that was the proximate cause of injury." The letter noted that Monumental had been "in the location doing water repair," and urged Ms. Megginson to address any further claims directly to them.

Ms. Megginson sued the City and Monumental on September 29, 2016. The parties undertook written discovery (no depositions), and then the City and Monumental moved for summary judgment. Both defendants' motions echoed the City's arguments that they didn't have notice, actual or constructive, of the allegedly defective water meter cover, that

neither had a duty to inspect the area in the absence of notice, and that nothing had been revealed in discovery that created a dispute of fact about their respective duties:

> In the instant case, [Ms. Megginson] has produced no evidence that the City received actual notice of the supposedly defective meter cover. Nor has [Ms. Megginson] been able to provide evidence that establishes how long the cover was missing, such that the City may be found to have constructive notice of the defect, as indicated by [Ms. Megginson]'s vague answers to the City's interrogatories. Nor has [Ms. Megginson] supplemented these answers at any time during the discovery period with any additional evidence that might indicate actual or constructive notice. Evidence of such notice is *necessary* to trigger the City's duty to repair.

Monumental argued as well that although it had performed excavation work nearby, its work zone did not extend beyond the *south* side of West North Avenue, and there was no evidence it had worked any closer than across the street from the defective meter lid.

Ms. Megginson's opposition countered with City records of reported water leaks and repairs nearby, records showing that Monumental had performed work in that neighborhood, and a diagram showing that the subterranean water and utility pipes were all interconnected—none of which related to the water meter itself or to the relevant side of West North Avenue. She relied most heavily on a copy of a letter from the City to Monumental dated May 5, 2016 notifying Monumental of her claim. At the bottom of the copy attached to her motion is a handwritten notation:

> MP+E Done Job
> 6-20-14 Take Notice
> Lid is Broke
> C Jones
> P. Crowl

From this notation, Ms. Megginson contends that Monumental knew on June 20, 2014, a month before Ms. Megginson's injury, that the lid on the water meter cover was "broke." She attached nothing more than a copy of this document itself, though—no affidavits or deposition testimony explained what the notation meant, who was meant to take notice, which lid was broken, or, for that matter, who wrote the notes or which defendant produced the document. Ms. Megginson's brief in this Court says, without citation, that the City produced it; at oral argument, her counsel claimed that it came from Monumental, and Monumental and the City each pointed at the other.[1]

After hearing oral arguments, the circuit court granted both defendants' motions for summary judgment. The court disregarded the May 5, 2016 letter because, it found, Ms. Megginson had failed to authenticate it, then found that Ms. Megginson had failed to establish that either the City or Monumental had actual or constructive notice of the defective water meter cover. She filed a timely notice of appeal.

II. DISCUSSION

Ms. Megginson identified two questions in her brief,[2] but they boil down to the overarching argument that the circuit court erred in granting summary judgment for the

[1] We looked first for a label that might identify the document's provenance, but, inexplicably, none exists. We find ourselves mystified that in 2018 (let alone 1998 or 1978), a party in a civil case would produce documents without any sort of labeling, especially a multidefendant case where liability depends on notice and the defendants might not stand in identical positions. And it boggles the judicial mind that *none* of the lawyers in this case knew, or even could offer a theory, about the origins of this document or who produced it.

[2] Ms. Megginson listed two Questions Presented:

> Did the Circuit Court err in granting the City summary

City and for Monumental. We review summary judgments *de novo*. *Ramlall v. MobilePro Corp.*, 202 Md. App. 20, 30 (2011). We consider first whether the record before the circuit court generated a genuine dispute of material fact. *Mayor and City Council of Balt. v. Whalen*, 395 Md. 154, 161 (2006). "We do not endeavor to resolve factual disputes, but merely determine whether they exist and are sufficiently material to be tried." *Newell v. Runnels*, 407 Md. 578, 607 (2009) (cleaned up). If the material facts aren't in dispute, we look at whether the trial court was correct as a matter of law. *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 471 (2010).

Ms. Megginson asserted claims for negligence against both defendants.

> In a negligence action, a plaintiff bears the burden of proving (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.

Marrick Homes v. Rutkowski, 232 Md. App. 689, 698 (2017) (cleaned up). To establish a duty, the plaintiff must show the defendant had actual or constructive knowledge of the alleged dangerous condition and that there was sufficient opportunity to remove the danger or warn invitees. *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 315 (2007). In the

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> judgment after excluding from consideration a document produced by the City in discovery on the ground that the document was not authenticated?
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> Did the Circuit Court err in granting Monumental Summary Judgment on the ground that the record was "devoid" of any evidence to suggest that Monumental was responsible for the defective water meter cover giving rise to Megginson's injury?

absence of actual notice, a city may have constructive notice of a dangerous road condition "when the evidence shows that [the] 'bad condition' is such that, by virtue of its nature or the length of time it has existed, the municipality would have learned of it by the exercise of due care . . . ." *Smith v. City of Balt.*, 156 Md. App. 377, 386 (2004).

This case hinges entirely on first element—a duty—which in turn depends on whether Ms. Megginson could establish a dispute of fact about whether the City or Monumental had notice of the defective water meter cover. The City argued in the circuit court, and argues here, that Ms. Megginson had not "show[n] that the City had actual or constructive notice of the alleged defect prior to her fall, or that it had sufficient time to repair said defect." Monumental made a similar argument: that "[t]here are no facts in evidence and [Ms. Megginson] cannot identify any facts to support her allegation of negligence" because the water meter cover at issue was outside Monumental's work zone. Ms. Megginson responded that the documents on which she relied at summary judgment created a triable issue as to notice, even though none identified the particular water meter cover or related to work done by Monumental on the relevant block of West North Avenue. In particular, Ms. Megginson argues that the circuit court erred in finding that she had failed to authenticate the annotated copy of the May 5 letter and, therefore, in disregarding it. She says Maryland Rule 2-501(b)[3] did not require her to authenticate the note because it was part of a "discovery response."

[3] "A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific

We agree with the circuit court that Ms. Megginson's opposition failed to create a triable issue of fact as to whether the City or Monumental had notice of the broken water meter cover. Once the defendants filed a motion for summary judgment that demonstrated that they were entitled to judgment as a matter of law, Rule 2-501(a), she bore the burden to "present admissible evidence demonstrating the existence of a material dispute." *Bagwell v. Peninsula Reg'l Med. Ctr*., 106 Md. App. 470, 488 (1995). It was not good enough simply to dispute the defendants' position—the Rules required her to produce evidence and, if the documents needed explaining, "an affidavit or other written statement under oath," Md. Rule 2-501(b), deposition testimony, answers to interrogatories, or transcripts of former testimony. *Injured Workers' Ins. Fund v. Orient Exp. Delivery Serv., Inc.*, 190 Md. App. 438, 452 (2010). She produced none of those things. Instead, she relied on documents that required inferences or speculation beyond the documents themselves, and failed to pair them with affidavits or testimony providing the additional factual or contextual support she needed to establish notice. Her exhibits included the initial "claim decision" letter from the City, two service request summary reports, a work order from a storm mainline inspection, an investigative report from June 2014, three daily construction logs from May 2014, two inspector's daily reports from June 2014, and the letter from the City to Monumental putting it on notice of Ms. Megginson's claim. But none of these documents indicate that Monumental ever worked on the water meter in question. All of

document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute." Md. Rule 2-501(b).

these documents related to work done slightly south of where the defective water meter was actually located. And none of the exhibits prove that the City was aware of—or should have been aware of—the defective water meter cover at 2142 West North Avenue before Ms. Megginson fell. Her opposition left the factual dots unconnected, and the circuit court was right not to connect them on its own.

Ms. Megginson places a great deal of hope on the May 5 letter, and especially on the handwritten notations that, she says, demonstrate that at least Monumental had notice of the defect. She claims that the letter is "self-authenticating," and therefore admissible under Maryland Rule 5-902(a). *See e.g.*, *Hartford Acc. & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 264 (1996) (trial court erred by not considering a photocopy of a notarized document in a response to a motion for summary judgment because it was self-authenticating as an "acknowledged document" under Maryland Rule 5-902(a)(8)). We disagree that it's self-authenticating, and the fact that the letter was produced in discovery doesn't save it from the authenticity requirement. Beyond that, though, we are at a loss to analyze the letter's authenticity more broadly given the total absence of information about its sources and origins.

For present purposes, we'll assume without deciding that the May 5 letter is authentic—the summary judgment result is the same. Without some admissible testimony or evidence identifying the author of the handwritten notes and his or her basis for knowing what is written here, explaining who "[to]ok notice" of what, connecting the "broke" "lid" to this meter, and describing the relevance of the two individuals named, this document

can't create a dispute about what either defendant knew. Ms. Megginson could have followed up on and bolstered this notation in discovery, but didn't notice or take any depositions or serve written discovery beyond the initial set. The parties had a full opportunity to develop the record through discovery, and that record supported the court's decision to enter summary judgment for the defendants. *See Piney Orchard Cmty. Ass'n v. Piney Pad A, LLC*, 221 Md. App. 196, 220–21 (2015).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.