Circuit Court for Baltimore City
Case No. 24C19002520

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2601
September Term, 2019

MAYOR AND CITY COUNCIL OF BALTIMORE

v.

SADE BARNETT

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: October 20, 2021

In May 2017, appellee Sade Barnett stepped on the cover of a water meter in front of 1607 Warwick Avenue. The cover was loose and when Barnett stepped on it, it moved and her leg fell into the hole beneath, causing injury. Her family called 911, took her to the hospital, and alerted the City that the hole was not covered. Barnett later sued Baltimore City for negligence. The circuit court denied the City's motions for judgment both pre-trial and again at the conclusion of the plaintiff's case. A jury found the City liable and awarded Barnett damages. Baltimore City now appeals, arguing that Barnett failed to produce evidence that the City had notice of the dangerous condition prior to her injury,[1] and the trial court should have granted its motions for judgment. For the reasons that follow, we reverse the judgment of the trial court.

DISCUSSION

When we review a trial court's denial of motions for judgment, we conduct the same analysis as the trial court and evaluate the court's decisions without deference. *District of Columbia v. Singleton*, 425 Md. 398, 406-07 (2012). A trial court should grant a motion for judgment when, viewing the evidence and inferences from the evidence in the light most favorable to the nonmoving party, the court finds that the evidence does not legally support the nonmoving party's claim, and thus is not sufficient to generate a jury question.

[1] Baltimore City also appeals on the grounds that Barnett failed to give the City proper notice of claim under the Local Government Tort Claims Act, Section 5-304(b) of the Courts Article of the Maryland Code, because her notice of claim had erroneously listed the location of the incident as 1611 North Warwick Avenue—down the street from where the incident actually occurred. Because we find that the City had no notice of the dangerous condition, we need not and do not address whether her notice of claim was sufficient under the Local Government Tort Claims Act.

MD. R. 2-519(b); *Mallard v. Earl*, 106 Md. App. 449, 455 (1995); *Smithfield Packing Co. v. Evely*, 169 Md. App. 578, 592 (2006). In other words, when the evidence supports only one conclusion, and that conclusion is that the evidence failed to establish something necessary to meet the plaintiff's burden, the court should grant the motion for judgment. *Smithfield*, 169 Md. App. at 592.

Before a municipality can be liable for a dangerous condition, a plaintiff must first show that the municipality had notice of the existence of the dangerous condition before it caused an injury to someone. *Williams v. Mayor of Baltimore City*, 245 Md. App. 428, 443 (2020). This notice can either be actual or constructive. A municipality has actual notice when its employees either personally observed the dangerous condition or were told about it. *Colbert v. Mayor & City Council of Baltimore*, 235 Md. App. 581, 588 (2018). A municipality has constructive notice when the dangerous condition has existed for so long that the municipality would have learned it existed if it had exercised due care. *Smith v. City of Baltimore*, 156 Md. App. 377, 386 (2004). By whichever theory, it is a plaintiff's burden to show by a preponderance of the evidence that the municipality had the required notice. *Zilichikhis v. Montgomery Cty.*, 223 Md. App. 158, 186-87 (2015).

To support her claim against Baltimore City, Barnett introduced evidence that about two months before her injury, a City employee had found a leak on "the consumer side" of the water system at 1607 Warwick Avenue. Barnett then offered expert testimony to the effect that to make such a determination, the City employee would have needed to access the water meter at that location, and to access the water meter, the employee would have had to remove the cover that caused Barnett's injury. The remainder of Barnett's evidence

provided general information about the Baltimore City water supply system that would be applicable to any water meter located anywhere within Baltimore City: that the City owned and was responsible for maintaining the water meter and all of its component parts; that the water meter lids were secured with a bolt that has a five-sided head; that City employees have a special "key" that allows them to unscrew the five-sided bolt; and that the purpose of the five-sided bolt is to limit access to the water meter.

Barnett's evidence only established that a City employee accessed the water meter cover within a few months of her injury. Barnett did not offer any evidence connecting that access to the water meter becoming a dangerous condition. There was no evidence that the City employee did or did not properly secure the cover. There was no evidence that a third party did or did not remove the cover at some later time. There was no evidence that any City employee was aware that the water meter cover was loose. There was no evidence that anyone had reported to the City that the water meter cover was loose. And there was no evidence to establish how long the cover was or may have been loose prior to Barnett's accident.

Evidence that a City employee opened the water meter, without more, is insufficient to support an inference that the City had either actual or constructive notice of a dangerous condition. Because Barnett failed to submit sufficient evidence to generate a jury question on the issue of notice, the trial court erred in denying Baltimore City's motions for judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED; CASE REMANDED FOR ENTRY OF

JUDGMENT AGAINST APPELLEE; COSTS ASSESSED TO APPELLEE.