No. 455048

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BESSIE M. WILLIAMS,

Plaintiff-Appellant,

vs.

JOHN DOE; FIRST TRANSIT,INC; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants- Respondents.

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1) The trial court erred by granting summary judgment to First Transit and John Doe. CP 694-696. (September 20, 2013).

2) The trial court erred by granting summary judgment to Central Bible Evangelical Church. RP 691-693. (September 20, 2013).

3) The trial court erred by striking the affidavits of Carol Williams and Alkenneth Gurley. RP 17-19.

4) The trial court erred in not granting a continuance, pursuant to 56(f) and CR 6(b). RP 16-20.

5) The trial court erred by refusing to allow pro hac vice counsel to continue to appear in the case. RP 16-20.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1) Is there a genuine issue of material fact for trial which would prevent summary judgment regarding First Transit's and John Doe's claims?

2) Is there a genuine issue of material fact for trial which would prevent summary judgment regarding Central Bible Evangelical Church's claims?

3) Did the trial court err by not granting a continuance pursuant to 56(c) and CR 6 (b)?

4) Did the trial court err in refusing to allow Appellant's pro hac vice counsel to continue to appear in the case pursuant to APR 8 (b)?

III. STATEMENT OF FACTS

Appellant Bessie Williams (Appellant) filed a complaint against First Transit, John Doe (Halsten) and Central Bible Evangelical Church (Central Bible) on October 25, 2011. She states that on October 26, 2008, she was being transported by John Doe, an employee of First Transit by bus to a church event at Central Bible. CP 2 paragraph 9; After they arrived at the church . She states that the driver Halsten was pushing her wheelchair on the sidewalk to the door of the church, he started running as he pushed the wheelchair. Id. Despite Appellant's pleas to stop, Defendant Halsten continued to run as he pushed the wheelchair. Id. The wheel of the wheelchair hit a raised crack in the sidewalk, causing the wheelchair to stop abruptly, causing the wheelchair to stop abruptly and causing Plaintiff to fall forward out of the wheelchair. Id. Plaintiff says that she felt herself in the air after she left the wheelchair. CP 534-555. At her deposition, Ms Williams indicated that Halsten was "running up the hill" and the she "felt it was going to fast for him to stop". Id. She begged him several times to stop running while pushing her and he told her that it was okay because he pumped iron. Id. She stated that she was scared for her life and that the wheelchair hit a crack in the sidewalk, came to an abrupt stop and she felt herself fly out of the wheelchair; she landed face down. She suffered numerous injuries from this accident. CP 2. As a result of this accident, some of the injuries Plaintiff suffered, include: a bruised forehead, a chipped tooth, a closed head injury, and injured leg and shoulders. CP 2, paragraph 15.

On August 2, 2013 both Respondents file a motion for summary judgment. CP 534-555; 500-512. The motion was scheduled for August 30, 2013. That motion was

rescheduled, as new counsel had just come into the case on behalf of Appellant. Respondents objected to the rescheduling because counsel filed a late notice of appearance. RP 3-10. The motion was rescheduled to September 20, 2013. The court informed. Appellant's new counsel, to respond to the motion by September 9, 2013 or send opposing counsel letters indicating that he would not oppose the motion. RP 8-9. On September 20, 2013, all parties appeared for the hearing. Appellant's counsel indicated to the court that Appellant's pro hac vice counsel from Michigan was not able to appear, and presented to the court a declaration from the out of town counsel, explaining to the court, the reason she couldn't be present; that declaration further asked the court for a short continuance and to schedule a phone conference so that she could be present telephonically. RP 12-19. The court denied the request indicating that since Appellant's pro hac vice counsel was no longer permitted to appear, the request was a moot point; that any document she submitted could not be considered by the court. RP 17. (those documents included: affidavits opposing summary judgment from Alkenneth Gurley and Carol Williams). RP 617-619,620-622. Appellant's local counsel then indicated to the court that in light of Appellant's pro hac vice counsel situation, he had prepared for one of the motions and was ready to proceed if the court wished. The court likewise denied the request to proceed, indicating that since the documents submitted by Appellant's pro hac vice counsel were not being considered, she was treating the motion as unopposed. RP 12-19. The court then entered summary judgment for the respondents, without indicating what documents or other evidence was called to the attention of trial court before the judgment was entered. RAP 9.12.

V. ARGUMENT

A. The trial court's rulings on summary are subject to de novo review

An order granting summary judgment is subject to review de novo, and the appellate court engages in the same inquiry as the trial court. Folsom v Burger King, 135 Wn.2d 658 (1998). Summary judgment is only warranted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56 (c). The burden is on the party seeking summary judgment to demonstrate the absence of a genuine issue of material fact. Folsom, 135 Wn.2d at 663. All of the facts and reasonable inferences must be viewed in the light most favorable to the nonmoving party. Ruvalcaba v Kwang Ho Baek, 175 Wn. 2d 1, 6. (2012). The de novo standard of review encompasses "all trial court rulings made in conjunction with a summary judgment motion". Folsom, at 663.

B. The trial court erred in granting summary judgment on First Transit's claims that there is no evidence of breach of duty and that Appellant caused her own injuries.

First Transit moved for the trial court to grant summary judgment as they suggest that there was no evidence that Respondent Halsten breached his duty to the Appellant. A party who moves for summary judgment on the ground that the nonmoving party has no evidence must affirmatively show the absence of evidence in the record. Celotex Corp. v Catrett, 477 U.S. 317 (1986).

Appellant's complaint addresses the breach of duty by Halsten as well as the interrogatories, and portions of her deposition testimony on file with the court. CP 1-4, 379-391, 534-555, There was no affirmative showing that there was an absence of

evidence in the record. This evidence on file and called to attention of the court, clearly establishes that Halsten breached his duty to Appellant, when he started running as he continued to push her wheelchair on an uphill sidewalk. Appellant says Halsten was running while he pushed the wheelchair, Halsten says he was not; clearly a disputed fact that is material. CP 530-533. First Transit also claims that Appellant caused her own injuries, as they allege that she put her foot down as the wheelchair was moving, causing her foot to catch a portion of the sidewalk and this is what caused her to fall out of the wheelchair. Id. Appellant say the wheelchair wheel hit the raised crack in the sidewalk causing it to abruptly stop, causing her to fall out of the wheelchair. CP 1-4, 534-555. Again, the facts as to what caused Appellant's injuries are disputed. Based on these disputed facts, summary judgment was inappropriate and should be reversed. jury to decide, not the trial court. There is evidence in on file which supports Williams' contention there is a genuine issue of material fact. The court erred in granting summary judgment.

C. The court erred in granting summary judgment Central Bible's claims.

CR 56 (c) states the moving party must meet its initial burden that the evidence on file establishes that there is no genuine issue as to any material fact and that they are entitled to summary judgment as a matter of law. Central does not establish that there is no genuine issue of material fact, as they cannot overcome that a dispute exists as to whether trees existed prior to October 26, 2008. Louis Diana states in his affidavit that there was no tree near the accident cite on October 26, 2008. However he doesn't state what the condition of the land in the area of the accident cite was prior to October 26,

2008. They have presented no evidence that there were never any trees in the vicinity of the accident prior to October 26, 2008. Additionally, Alkenneth Gurley in his affidavit stated that there is currently a tree that is planted 8-10 feet away from the raised crack in the sidewalk. RP 617-619. He also stated that he has seen others trip and fall in the same cracks area that Appellant fell from her wheelchair, and that the cracks can't really be seen until a person is almost right on top of the crack. RP 617-619. This takes him out of the special use doctrine category and raises a question of fact whether the current tree that is 8- 10 feet away, caused the defective condition of the sidewalk or whether any trees in the vicinity of the accident prior to October 26, 2008 caused the defective condition of the sidewalk. There is no duty to inspect property and no liability to the land owner so long as the land remains in it natural condition, i.e, the land has not been changed by any act of a human being. Rosengren v City of Seattle, 149 Wn. App. 565 (2009). There has been no evidence produced that this land remains in its natural condition and has not been changed by any act of a human being. Thus, Central Bible would have a duty to inspect and maintain the premises. A genuine issue of material fact exists for summary judgment purposes where reasonable minds could differ on the facts which control the outcome of the case. Wilson v Steinbachk 98 Wash 2d 434, 437 (1982); Ranger Ins v Pierce County, 164 Wash 2d 545 (2008).The affidavit of Louis Diana is insufficient to establish that no duty existed and does not establish that Central Bible is entitled to summary judgment as a matter of law. The court erred in granting summary judgment.

D. The court erred in not granting a short continuance pursuant to CR 56(f) and CR 6 (b).

Here, the Appellant's affidavit's were not considered by the court in making its summary judgment ruling, because it reasoned that Appellant's pro hac vice counsel's status to appear in her court had been cancelled when the original local counsel with whom she associated withdrew from the case. RP 17. Although Appellant's pro hac vice counsels had a good reason for not being present at the September 20th hearing, which she submitted by declaration (of which the court did not read the reason for the unavailability into the record), and an explanation for the untimely filings the court choose to deny the request for a short continuance and treat the motion as unopposed, granting summary judgment on a technicality for failure to timely respond. RP 8. The Respondents did not indicate that they would have been prejudiced in any way by a short continuance and the court did not find that there would be any prejudice by granting a short postponment. RP 12-17. Thus, the court erred in not granting short continuance.

E. The trial court erred by not allowing Appellant's pro hac vice counsel to appear pursuant to APR 8(b).

At the time of the hearing Septebmber 20, 2013 , Appellant's pro hac vice counsel's status had not been revoked, teminated or cancelled, after having a limited license to practice in the instant case. CP 50-52. At the hearing, Appellant's current local counsel, Mr. Ewetuga submitted a document indicating that counsel wasn't able to be present that the court, and in response, the court indicated that "Ms. Coleman's participation is this case... is cancelled", and as such the material she submitted are "not

applicable to the case because the court can't consider them". RP 17. However, there is nothing in the rule that indicates that once admitted, pro hac vice status is terminated counsel once the local counsel, who is associated with pro hac vice counsel, withdraws from the case. Appellant's pro hac vice counsel did subsequently associate with Appellant's current local counsel, who is an active member of the Washington State Bar and as such Ms. Coleman's pro hac vice status to appear in the instant matter is still active. Thus, the court erred in not allowing Appellant' pro hac vice counsel to appear and its ruling should be reversed.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully asks this court to reverse the trial court, vacate summary judgment orders, and remand the case for trial.

Dated this 7th day of June,

Bessie M Williams

Bessie M. Williams, Pro Se

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

BESSIE WILLIAMS,

Appellant,

vs.

JOHN DOE; FIRST TRANSIT, INC; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Appelles.

NO. 45504-8-II

DECLARATION OF SERVICE

I certify that on June 10, 2014 I caused a copy of Appellant's brief and Reporting Papers to be served by First Class Mail upon:

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Dated this 10th day of June 2014.

Bessie M. Williams