Missouri Court of Appeals
Southern District

In Division

HAILEY J. UNRUH,

Plaintiff-Appellant,

v.

WILLOW SPRINGS R-IV SCHOOL DISTRICT,

Defendant-Respondent.

Number SD39136

Filed: September 23, 2026

APPEAL FROM THE CIRCUIT COURT OF HOWELL COUNTY

Honorable Steven A. Privette, Judge

AFFIRMED

Hailey J. Unruh ("Appellant") appeals the trial court's grant of summary judgment in favor of Willow Springs R-IV School District ("Respondent") and the denial of her cross-motion for summary judgment. In her first three points on appeal, Appellant alleges the trial court erroneously entered summary judgment in favor of Respondent because the summary judgment record supported the existence of a dangerous condition on Respondent's property waiving Respondent's sovereign immunity. In her

final point on appeal, Appellant alleges the trial court erroneously denied her cross-motion for summary judgment. Because Appellant failed to establish waiver of Respondent's sovereign immunity in compliance with Rule 74.04[1] and the denial of her cross-motion for summary judgment is not subject to appellate review, we affirm.

Factual Background and Procedural History

Appellant filed suit against Respondent seeking to recover damages for injuries allegedly sustained on December 6, 2019, when Appellant was participating in gym class. Appellant alleges that she suffered injury due to colliding with a wall in the gymnasium on Respondent's property.

Respondent filed a motion for summary judgment on May 3, 2024, asserting that Appellant's claims are barred by sovereign immunity. Attached to Respondent's motion was a Statement of Uncontroverted Material Facts ("SUMF") setting forth that:

1. [Appellant] alleges that the configuration of the wall of the gymnasium in conjunction with the gym floor in [Respondent]'s high school gymnasium created a dangerous condition, depicted below. *See* Exhibit A, [Appellant's]Petition, ¶¶ 5, 6; see Exhibit B, Photograph; see Exhibit C, Photograph.[2]

2. [Appellant] claims that she was injured during gym class by being forced into the gym wall via a trip or a push, while running in a relay around the gym for class. *See* Exhibit D, [Appellant's] Responses to [Respondent]'s First Interrogatories.

[1] All rule references are to Missouri Court Rules (2024).

[2] Exhibits B and C are photographs of the gymnasium wall section at issue.

3. [Appellant] alleges [Respondent]'s employees either created the dangerous condition or failed to use ordinary care to remove, remedy, or warn of the condition. *See* Exhibit A, [Appellant's] Petition, ¶¶ 11.

4. [Appellant] would not have suffered any injuries but for being tripped, or otherwise compelled, into the wall by a fellow classmate. *See* Exhibit A, [Appellant's] Petition.

Appellant subsequently filed her Response to Respondent's SUMF, admitting each of these alleged facts.[3] Appellant did not assert any additional material facts in response to Respondent's motion, but did file her own cross-motion seeking summary judgment on the issue of Respondent's liability. The trial court thereafter entered summary judgment in favor of Respondent based on the doctrine of sovereign immunity and denied Appellant's cross-motion for summary judgment. This appeal follows.

Standard of Review

We review a grant of summary judgment *de novo*. ***Wilkinson v. Farmers Holding Companies***, 732 S.W.3d 93, 96 (Mo. banc 2026). In conducting such review, we apply "the same criteria as the trial court in determining whether summary judgment was proper." ***Green v. Fotoohighiam***, 606 S.W.3d 113, 115 (Mo. banc 2020) (quoting ***Goerlitz v. City of Maryville***, 333 S.W.3d 450, 452 (Mo. banc 2011))[4]. "Summary

[3] Appellant attempted to controvert Respondent's Fact 4 but failed to support her denial with "specific references" to "discovery, exhibits or affidavits." Rule 74.04(c)(2). Consequently, her non-compliant response to Fact 4 "is an admission of the truth of that numbered paragraph." ***Id***.

[4] *Abrogated on other grounds by* ***Glendale Shooting Club, Inc. v. Landolt***, 661 S.W.3d 778 (Mo. banc 2023).

judgment practice in Missouri is governed by Rule 74.04 and [our Supreme Court's] decision in ***ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.***, 854 S.W.2d 371 (Mo. banc 1993)." ***Green***, 606 S.W.3d at 116. Accordingly, "[o]ur *de novo* standard of review means that we look at the summary judgment issues presented on appeal as the trial court should have initially under Rule 74.04, and we give no deference to the trial court's ruling." ***Great S. Bank,*** 497 S.W.3d at 834.

Under Rule 74.04, summary judgment shall be granted if "the motion, the response, the reply and the sur-reply show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 74.04(c)(6). Our review of the grant of a motion for summary judgment is confined to the facts contained in the corresponding summary judgment filings – viewed in the light most favorable to party against whom summary judgment was entered – and does not extend to the entire trial court record. ***Holzhausen v. Bi-State Dev. Agency***, 414 S.W.3d 488, 492-94 (Mo. App. E.D. 2013). Where, as here, the movant is the "defending party," the right to judgment as a matter of law may be established by showing:

> (1) facts that negate *any one* of the claimant's elements facts, (2) that the non-movant, after an adequate period of discovery, has not been able to produce, and will not be able to produce, evidence sufficient to allow the trier of fact to find the existence of *any one* of the claimant's elements, or (3) that there is no genuine dispute as to the existence of *each* of the facts necessary to support the movant's properly-pleaded affirmative defense.

ITT, 854 S.W.2d at 381 (emphasis in original).

Outside very rare circumstances, "[t]he denial of a motion for summary judgment is not an appealable order because it is not final." ***Keystone Mut. Ins. Co. v. Kuntz***, 507 S.W.3d 162, 166 (Mo. App. S.D. 2016). As discussed further below, such rare circumstances are not present in this case.

Analysis

Respondent is a public school district that enjoys sovereign immunity "as existed at common law in [Missouri] prior to September 12, 1977," except as waived, abrogated or modified by statute. § 537.600.1;[5] ***State ex rel. Missouri Dept. of Agric. v. McHenry***, 687 S.W.2d 178, 182 n.5 (Mo. banc 1985) (public school districts are entitled to sovereign immunity). Sovereign immunity is the longstanding rule that the State and its political subdivisions are "immune from suit and cannot be sued … without … consent." ***State ex rel. Eagleton v. Hall***, 389 S.W.2d 798, 801 (Mo. banc 1965); *see also* ***Winston v. Reorganized Sch. Dist. R-2, Lawrence Cnty., Miller***, 636 S.W.2d 324, 328 (Mo. banc 1982) ("[W]ithin constitutional limits, a sovereign may prescribe the terms and conditions under which it may be sued, and the decision to waive immunity, and to what extent it is waived, lies within the legislature's purview."). "Sovereign immunity is not a defense to suit but, rather, it is immunity from tort liability altogether." ***State ex rel. City of Grandview v. Grate***, 490 S.W.3d 368, 369 (Mo. banc 2016); *see also*

[5] Unless otherwise indicated, all statutory references are to RSMo 2016 (as amended through December 6, 2019).

McHenry, 687 S.W.2d at 181 ("Immunity connotes not only immunity from judgment but also immunity from suit.").

Here, Appellant bases her theory of waiver on the "dangerous condition exception" to sovereign immunity under § 537.600.1(2).[6] This exception requires a claimant to show:

> 1) a dangerous condition of public property, 2) that the injury directly resulted from the dangerous condition, 3) that the dangerous condition created a reasonably foreseeable risk of the kind of harm incurred, and 4) that a public employee negligently created the condition, or the public entity had actual or constructive notice of the condition.

State ex rel. Missouri Highway & Transp. Comm'n v. Dierker, 961 S.W.2d 58, 60 (Mo. banc 1998). Thus, Respondent was entitled to judgment as a matter of law if, after an adequate period of discovery, Appellant did not show she could adduce sufficient evidence to establish a waiver of Respondent's sovereign immunity.[7] *See* ***Lackey v. Iberia R-V Sch. Dist.,*** 487 S.W.3d 57 (Mo. App. S.D. 2016); ***Maune ex rel. Maune v. City of Rolla***, 203 S.W.3d 802, 804 (Mo. App. S.D. 2006). Put another way, to avoid summary judgment in this case, Appellant had to establish – via proper responses to Respondent's stated material facts and a statement of "additional material facts that remain in

[6] "Courts strictly construe statutes waiving sovereign immunity." ***Jones v. Missouri Labor & Indus. Relations Comm'n***, 734 S.W.3d 802, 807 (Mo. banc 2026).

[7] Because review of summary judgment is *de novo,* "if the trial court's judgment can be sustained on any ground as a matter of law, even if different than the one posited in the order granting summary judgment, it should be affirmed." ***Rice v. Shelter Mut. Ins. Co.***, 301 S.W.3d 43, 46 (Mo. banc 2009).

dispute" (if any) under Rule 74.04(c)(2) – each of the elements for a dangerous condition as recited above. *See* ***Maune***, 203 S.W.3d at 804 (Appellant bore the burden to establish the elements of a dangerous condition "as part of its own case, because sovereign immunity is not an affirmative defense.").

Points 1, 2 and 3

We will address Appellant's Points 1 and 2 together as the analysis for each point is the same. Appellant alleges that the summary judgment record establishes that 1) a dangerous condition existed on Respondent's property and 2) said condition proximately caused her injuries. Specifically, Appellant contends that the "summary judgment facts" show that the disputed wall section was dangerous and contributed to her injuries because it had multiple corners or angles and was too close to the basketball court on the gym floor in contravention of "standard guidance." Appellant contends such facts preclude an award of summary judgment to Respondent. We disagree, however, that the facts asserted by Appellant are present in the operative summary judgment record – *i.e.*, the record pleadings related to *Respondent's* motion for summary judgment.

"The language of Rule 74.04 establishes the boundaries of Missouri's summary judgment practice." ***Great S. Bank***, 497 S.W.3d at 828 (quoting ***ITT***, 854 S.W.2d at 380). "Because the underlying purpose of Rule 74.04 is directed toward helping the court expedite the disposition of [the] case, compliance with the rule is mandatory." ***Id***.

(quoting ***Pub. Sch. Ret. Sys. of Missouri v. Taveau***, 316 S.W.3d 338, 343 (Mo. App. W.D. 2010) (internal quotations omitted)). After being served with a motion for summary judgment under 74.04(c)(1), 74.04(c)(2) requires the non-moving party to serve a response admitting or denying movant's statement of uncontroverted facts. Any "additional material facts that remain in dispute" should also be set forth in this response. Rule 74.04(c)(2); *see also* ***Green***, 606 S.W.3d at 117 ("Facts come into a summary judgment record *only* via Rule 74.04(c)'s numbered-paragraphs-and-responses framework.") (quoting ***Jones v. Union Pac. R.R. Co.***, 508 S.W.3d 159, 161 (Mo. App. S.D. 2016)) (emphasis in original). Notably, while 74.04(a) allows a claimant to file a motion for summary judgment after service of an adverse motion for summary judgment, nothing in any of 74.04's provisions provides that a claimant's cross-motion may be substituted in lieu of a 74.04(c)(2) fact response or statement of additional material facts.

Here, Appellant's response to Respondent's motion for summary judgment admitted (or is deemed to have admitted) each fact in Respondent's SUMF and did not assert any "additional material facts that remain in dispute." Again, as explained further below, review of Appellant's cross-motion for summary judgment (and by extension, the SUMF attached thereto) is not proper on appeal.[8] Consequently, our review is confined

[8] While not binding, we note that federal courts adjudicating cross-motions for summary judgment under the federal summary judgment rule decide "each party's motion on an individual and separate basis." ***Auto-Owners Ins. Co. v. Stevens & Ricci Inc.***, 835 F.3d 388, 402

to the four facts set forth in Respondent's SUMF. Facts 1-3 are merely recitations of Appellant's general allegations in the case while Fact 4 only asserts that Appellant would not have been injured "but for being tripped, or otherwise compelled, into the [gym] wall by a fellow classmate." Even viewing these facts in the light most favorable to Appellant, nothing in this summary judgment record shows the actual existence of any condition, much less a dangerous condition, of Respondent's property. Accordingly, Appellant failed to establish a waiver of Respondent's sovereign immunity in response to Appellant's motion for summary judgment, and thus the trial court did not err in granting such motion. *See* ***Maune***, 203 S.W.3d at 804. Points 1 and 2 are denied.

Appellant's Point 3 is directed at the "open and obvious" affirmative defense asserted by Respondent. Because we hold that Appellant has failed to establish a waiver of Respondent's sovereign immunity, we need not reach Appellant's claims with respect to any affirmative defenses asserted by Respondent. Point 3 is thus overruled as moot.

Point 4

In her final point on appeal, Appellant alleges she was entitled to summary judgment on the issue of liability and the trial court therefore erred in denying her cross-motion for summary judgment. Appellant concedes that the denial of summary judgment is generally not reviewable on appeal but claims an exception applies in this

(3d Cir. 2016) (quoting 10A Charles Alan Wright et al., *Federal Practice & Procedure* § 2720 (3d ed. 2016)).

case because the material facts are undisputed and the issues raised by Appellant's cross-motion are inextricably intertwined with the merits of Respondent's motion for summary judgment. We disagree.

"On very rare occasions, we will review the denial of summary judgment where the facts asserted by both parties are nearly identical and are so intertwined that the propriety of granting the motion is purely an issue of law." ***Chastain v. United Fire & Cas. Co.***, 653 S.W.3d 616, 620 (Mo. App. S.D. 2022). Here, a cursory examination of Appellant's SUMF in support of her separate summary judgment motion reveals that the facts asserted are not "nearly identical" to those asserted in support of Respondent's summary judgment motion. Further, the issues presented by the parties' respective summary judgment motions were not inextricably intertwined.

Waiver of sovereign immunity was but one element Appellant would need to prove in order to prevail on her request for summary judgment as to liability against Respondent.[9] Denial of Respondent's motion on the issue of sovereign immunity would have simply amounted to a non-final, interlocutory ruling that Respondent's motion failed to establish uncontroverted material facts showing Respondent was immune from Appellant's suit, and such denial in and of itself would not have obviated the need for

[9] "[T]he general elements of negligence are: (1) a legal duty owed to the [Appellant] by the [Respondent]; (2) a breach of that duty by the [Respondent]; (3) proximate cause; and (4) injury to the [Appellant]." ***Campbell v. Baxter Int'l, Inc.***, 697 S.W.3d 36, 42 (Mo. App. E.D. 2024).

the trier of fact to decide the issue of Respondent's ultimate liability for Appellant's alleged injuries. *See generally* ***Stacy v. Bar Plan Mut. Ins. Co.***, 522 S.W.3d 914, 918 (Mo. App. E.D. 2017) (Broadly, "upon a ruling denying a motion for summary judgment, the issues raised by the pleadings are still in the case ... to be tried.") (internal quotations and citation omitted).

In contrast, both the cases relied upon by Appellant to support reviewability involved disputes over the interpretation of contracts where the underlying contract language itself was uncontroverted and the rejection of one party's interpretation of said language would necessarily require acceptance of the opposing party's interpretation (and, ultimately, judgment in their favor). *See* ***Behrick v. Konert Farms Homeowners' Ass'n***, 601 S.W.3d 567, 575–76 (Mo. App. E.D. 2020) (reviewing cross-motions for summary judgment on the issue of whether plaintiff's backyard wall was a "retaining wall" under a HOA declaration); ***Thiemann v. Columbia Pub. Sch. Dist.***, 338 S.W.3d 835, 843 (Mo. App. W.D. 2011) ("Our legal determination today that coverage should have been afforded [to Appellant] under the Plan will require the trial court on remand to find liability in favor of [Appellant] with respect to her claims addressing the availability of coverage."). We find that the facts and issues involved in the two summary judgment motions in this case are not so intertwined as to permit appellate review of the denial of Appellant's cross-motion for summary judgment. Appellant's Point 4 is denied.

Conclusion

The trial court's judgment is affirmed.

MATTHEW P. HAMNER, J. – OPINION AUTHOR

JENNIFER R. GROWCOCK, J. – CONCURS

BRYAN E. NICKELL, J. – CONCURS