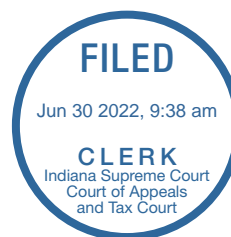


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Gwendolyn Smith,
Appellant-Plaintiff,

v.

City of Terre Haute, Indiana and
Terre Haute Park and Recreation
Board,
Appellees-Defendants.

June 30, 2022

Court of Appeals Case No.
22A-CT-397

Appeal from the Vigo Superior
Court

The Honorable Lakshmi Y.
Reddy, Judge

Trial Court Cause No.
84D02-2101-CT-130

Najam, Judge.

Statement of the Case

[1] Gwendolyn Smith appeals the trial court's grant of summary judgment in favor of the City of Terre Haute and the Terre Haute Park and Recreation Board

(collectively, “Terre Haute”) on her complaint for negligence. Smith raises one issue for our review, namely, whether the trial court erred when it entered summary judgment. However, because Smith has not provided us with the materials necessary to consider her appeal, we affirm the trial court’s order.

Facts and Procedural History

- [2] On January 11, 2021, Smith filed a complaint against Terre Haute.¹ According to her complaint, Smith visited the Herz-Rose Park in Terre Haute on the evening of June 11, 2020. She further alleged that, while there, she “attempted to disembark from a slide” but “fell to the ground due to a step missing from the ladder of the slide.” Appellees’ App. Vol. 2 at 2. And she alleged that she sustained “injuries” as a result of her fall. *Id.* Smith maintained that her injuries “were proximately caused by the negligence” of Terre Haute. *Id.* Terre Haute filed their answers and affirmative defenses and alleged that Smith’s claims were barred because of her “contributory negligence.” *Id.* at 5.
- [3] Terre Haute then filed a motion for summary judgment, a memorandum in support of their motion, and a designation of evidence on November 8. *See* Appellant’s App. Vol. 2 at 6. On December 21, Smith filed her response and her designation of evidence. *See id.* at 7. The court did not hold a hearing but found that the “undisputed facts demonstrate that [Smith] was focused on her

¹ As discussed below, Smith has not provided a copy of either party’s designations of evidence, and it is unclear which evidence was properly presented to the court. We will therefore limit our statement of the facts to those obtained from the complaint and CCS.

granddaughter and that her conduct was negligent to some degree[,] which proximately caused her injury.” *Id.* at 10. And the court concluded that Smith’s contributory negligence “was enough to bar her recovery against a governmental entity[.]” *Id.* Accordingly, the court granted Terre Haute’s motion for summary judgment. This appeal ensued.

Discussion and Decision

[4] Smith contends that the trial court erred when it granted Terre Haute’s motion for summary judgment. However, we do not reach the merits of Smith’s appeal. Indiana Appellate Rule 50(A) provides, in relevant part:

(1) *Purpose.* The purpose of an Appendix in civil appeals . . . is to present the Court with copies of only those parts of the Record on Appeal that are necessary for the Court to decide the issues presented.

(2) *Contents of Appellant’s Appendix.* The appellant’s Appendix shall contain a table of contents and copies of the following documents, if they exist.

(a) the chronological case summary for the trial court

(b) the appealed judgment or order

* * *

(f) pleadings and other documents from the Clerk’s record in chronological order that are necessary for the resolution of the issues raised on appeal[.]

(Italics in original, emphasis added).

[5] Here, Smith included in her Appendix a copy of the CCS and a copy of the appealed order. However, she has not provided the Court with a copy of either Terre Haute’s motion for summary judgment or her response. More significantly, Smith has failed to provide us with the parties’ designations of evidence. As a result, while she included portions of her deposition testimony and pictures of the playground in her Appendix, we have no way of knowing whether that evidence was properly designated to the trial court.

[6] It is well settled that, when reviewing the grant of a motion for summary judgment, “we may consider only those portions of the pleadings, depositions, and any other matter specifically designated to the trial court for purposes of the motion for summary judgment.” *Am. Access Cas. Co. v. Cincinnati Ins. Co.*, 103 N.E.3d 644, 648-49 (Ind. Ct. App. 2018). Because Smith has not provided us with the list of evidence designated to the court, we have no basis upon which to review the substantive issues she has raised.² We therefore hold that Smith has failed to meet her burden on appeal to demonstrate that the court erred. We affirm the trial court.

² We further observe that, in her brief on appeal, the entirety of Smith’s argument is that “[i]t is clear that [she] was not aware of the missing step, which resulted in her injuries as she attempted to disembark from the slide.” Appellant’s Br. at 13. However, the trial court found that she was “focused on her granddaughter,” such that her conduct was “negligent to some degree.” Appellant’s App. at 10. Smith does not address that finding or otherwise make any argument that she was not contributorily negligent.

[7] Affirmed.

Bradford, C.J., and Bailey, J., concur.