EXAMINERS' ANALYSIS OF QUESTION NO. 4

The circuit court's errors were as follows. First, an affidavit, to be valid, must be signed and notarized. Here, the defendant's affidavit was not signed, and thus the statements within it do not constitute sworn testimony. It therefore should not have been considered by the court. *Rataj v City of Romulus*, 306 Mich App 735, n8 (2014) ("[A]n unsworn, unsigned affidavit may not be considered by the trial court on a motion for summary disposition." *Gorman v American Honda Motor Co*, 302 Mich App 113, 120 (2013)). Indeed, an unsigned, nonnotarized "affidavit" is no affidavit at all. *Holmes v Mich Capital Med Ctr*, 242 Mich App 703, 711-712 (2000).

Second, "[I]t is well settled that the circuit court may not weigh the evidence or make determinations of credibility when deciding a motion for summary disposition." *Innovative Adult Foster Care v Ragin*, 285 Mich App 466, 480 (2009). Here, the circuit court did just that by opining that an affidavit was more worthy of belief than the deposition testimony. That is not the role of a court in deciding a motion for summary disposition.

Third, it is improper for a court to rely on inadmissible hearsay when determining whether a genuine issue of material fact exists. Newspaper articles are typically inadmissible hearsay, *Baker v Gen Motors Corp*, 420 Mich 463, 511 (1984), and the statements repeated by the police officer that were contained in the newspaper article is inadmissible hearsay. Hence, it may not be considered when deciding a motion for summary disposition. See *Maiden v Rozwood*, 461 Mich 109, 125 (1999).

Fourth, for two reasons the court should not have visited the scene and should not have used that information in deciding the motion. Although MCR 2.507(D) permits a court to view the location at issue when sitting as trier of fact during trial, the rule does not give the court authority to use such information when deciding a summary disposition motion. Courts cannot reach out and consider evidence not on file or submitted by the parties. MCR 2.116(G)(5). Going outside the record was in error.

Fifth, a court may not "make findings of fact; if the evidence before it is conflicting, summary disposition is improper." *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299 (2003)

(quotation marks and citation omitted). The court improperly took evidence outside the record and used it to make a finding as to what occurred.

Sixth, and finally, the court erred in concluding that the use of an affidavit alone is not sufficient to create a genuine issue of material fact. Rather, the court rules allow a party opposing such a motion to submit affidavits. MCR 2.116(G)(4). No other evidence is necessary so long as the affidavit itself raises a genuine issue of material fact. *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 66 (2004).