

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**410**

**CA 16-01611**

PRESENT: CENTRA, J.P., LINDLEY, CURRAN, AND TROUTMAN, JJ.

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LINZY FANCETT, AN INFANT UNDER THE AGE OF 14  
YEARS, BY AND THROUGH HER MOTHER AND NATURAL  
GUARDIAN SUSAN KUHN AND SUSAN KUHN, INDIVIDUALLY,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

CITY OF SYRACUSE, DEFENDANT-APPELLANT.

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JOSEPH FAHEY, INTERIM CORPORATION COUNSEL, SYRACUSE (JOHN A. SICKINGER  
OF COUNSEL), FOR DEFENDANT-APPELLANT.

LYNN LAW FIRM, LLP, SYRACUSE (PATRICIA A. LYNN-FORD OF COUNSEL), FOR  
PLAINTIFFS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Onondaga County  
(Deborah H. Karalunas, J.), entered April 22, 2016. The order denied  
the motion of defendant for summary judgment.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking to recover  
damages for injuries allegedly sustained by the infant plaintiff when  
her foot went through a gap between two sections of a steel grate  
covering a debris basin. Defendant moved for summary judgment  
dismissing the complaint on the ground that the grate and debris basin  
were part of a culvert on a City street, and the prior written notice  
of the defect required by Syracuse City Charter § 8-115 (1) was not  
provided with respect thereto. We conclude that Supreme Court  
properly denied the motion, but our reasoning differs from that of the  
court.

To meet its initial burden on the motion, defendant was required  
to establish as a matter of law that the debris basin was indeed a  
culvert or part of a City street for purposes of the prior written  
notice requirement (*see generally Staudinger v Village of Granville*,  
304 AD2d 929, 929). We conclude that defendant failed to meet that  
burden (*cf. Duffel v City of Syracuse*, 103 AD3d 1235, 1235; *Hall v*  
*City of Syracuse*, 275 AD2d 1022, 1023). Here, the debris basin is not  
a culvert (*see Sobotka v Zimmerman*, 48 AD3d 1260, 1261). With respect  
to whether the debris basin was situated in a street for the purposes  
of the prior written notice requirement, we conclude that defendant  
failed to submit evidence establishing the precise location of the

debris basin. Thus, in the absence of a metes and bounds description of the nearby streets, a survey map, or any instruments of conveyance establishing the boundaries of the City streets, defendant failed to establish that the debris basin was situated in a City street for the purposes of the prior written notice requirement (see *Staudinger*, 304 AD2d at 929).

Entered: March 31, 2017

Frances E. Cafarell  
Clerk of the Court