

STATE OF MICHIGAN
COURT OF APPEALS

ROXANNE CHEER and ROBERT CHEER,

Plaintiffs-Appellants,

v

K-MART CORPORATION and RAMCO-
GERSHENSON, INC,

Defendants-Appellees.

UNPUBLISHED

May 16, 1997

No. 190905

Oakland Circuit Court

LC No. 95-490868 NO

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

In this negligence action, plaintiff tripped and fell on a crack in the asphalt of defendant's parking lot when, as she was walking to the store, her attention was distracted by a car backfiring. Plaintiff turned her head to investigate the sound but continued walking, and thereupon injuriously encountered the surface irregularity. Defendant, however, successfully sought summary disposition, generating this appeal of right. This case is being decided without oral argument pursuant to MCR 7.214(E).

Where, as here, the danger is open and obvious, and plaintiff's attention was not distracted by anything for which defendants are responsible, yet, if plaintiff had observed the danger, she would have been able to easily avoid it, and where the photographs of the irregularity in the asphalt indicate that the risk of harm was not even arguably unreasonable, summary disposition was properly granted. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 621; 537 NW2d 185 (1995).

Affirmed.

/s/ Maura D. Corrigan

/s/ Robert P. Young, Jr.

/s/ Michael J. Talbot

* Circuit judge, sitting on the Court of Appeals by assignment.