

STATE OF MICHIGAN  
COURT OF APPEALS

---

JERRY NEMECEK, Personal Representative of the  
Estate of VIOLET A. NEMECEK, Deceased,

UNPUBLISHED  
June 27, 1997

Plaintiff-Appellant,

v

No. 191378  
Manistee Circuit Court  
LC No. 94-007491-NO

KNIGHTS OF COLUMBUS,

Defendant-Appellee.

---

Before: Hoekstra, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

While attempting to enter a building that defendant owned and operated, plaintiff's decedent slipped and fell on a snow-covered stairway, suffering a broken arm and a scrape above an eye. She and her husband brought suit against defendant, alleging negligence and loss of consortium. Subsequently, she developed an ulcer and a pancreatic tumor that led to her death.

Plaintiff contends that the trial court improperly found that defendant had no duty to protect plaintiff's decedent from the open and obvious danger presented by the snow-covered staircase. We disagree. To establish a prima facie case of negligence, a plaintiff must first prove that a duty was owed by the defendant to the plaintiff. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). Here, the parties acknowledge that the decedent was an invitee upon defendant's premises. As an invitee, defendant owed plaintiff's decedent a duty to maintain its premises in a reasonably safe condition and to exercise ordinary care to keep the premises safe. *Schuster v Sallay*, 181 Mich App 558, 565; 450 NW2d 81 (1989). However, this duty does not extend to conditions from which an unreasonable risk cannot be anticipated or to dangers so obvious that an invitee can be expected to discover them herself. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 500; 418 NW2d 381 (1988); *Wagner v Regency Inn Corp*, 186 Mich App 158, 162; 463 NW2d 450 (1990). For the open and obvious danger rule to be applicable to the question of duty two factors must

be considered. First, a determination must be made regarding whether an open and obvious danger exists and, second, if the danger is open and obvious, whether the landowner should anticipate harm to an invitee, despite the open and obvious nature of the danger. See *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 610-611; 537 NW2d 185 (1995).

Here, making all reasonable inferences in plaintiff's favor, *Id.* at 618, we conclude that no duty was owed to the plaintiff. It was undisputed that there was at least a foot of snow covering the steps on which the decedent slipped, and that the area was lighted. Nothing in the record indicated that the decedent would not reasonably be expected to recognize the danger of walking on the stairway or that defendant should have anticipated that anyone would attempt to use the stairway when it was covered in at least a foot of snow. In addition, the main entrance to the building had been cleared, affording safe access to the building. In the 26 years defendant had been operating at this location, defendant never received any reports of other incidents of individuals falling on these steps despite the fact that they were not ordinarily maintained during the winter months. Consequently, we conclude that defendant did not owe a duty to the decedent in this situation.

Plaintiff's reliance on *Quinlivan v Great Atlantic & Pacific Tea Company, Inc.*, 395 Mich 244; 235 NW2d 732 (1975) for the proposition that the open and obvious danger rule does not apply to cases involving the natural accumulation of ice and snow is without merit. *Quinlivan* merely rejected the previous rule that ice and snow hazards are obvious in all circumstances and, consequently, cannot give rise to liability. *Id.* at 261. The rejection of that principle does not, in our opinion, mean that the open and obvious danger rule is not applicable to ice and snow cases.

Because defendant did not owe a duty to the decedent, this Court need not reach plaintiff's arguments regarding breach of duty and proximate cause.

Affirmed.

/s/ Joel P. Hoekstra

/s/ William B. Murphy

/s/ Michael R. Smolenski