

STATE OF MICHIGAN
COURT OF APPEALS

DONALD GRIGSBY,

Plaintiff-Appellee,

v

GENESEE PACKAGING, INC.,

Defendant-Appellant,

and

WILLIAM E. COONS, d/b/a COONS TRUCKING,

Defendant.

UNPUBLISHED

August 26, 1997

No. 195337

Genesee Circuit Court

LC No. 95-040150-AV

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant Genesee Packaging, Inc., appeals by leave granted the circuit court order reversing the district court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10) in this premises liability action. We reverse.

Plaintiff was employed as a security guard and was assigned to Genesee Packaging in Flint. Plaintiff's job required him to arrive at 5:00 a.m. and close a gate that was left open over night to allow late-shift employees to exit. Plaintiff attempted to close the gate on January 21, 1992, but was unable to do so because the gate was frozen open as a result of snow and ice accumulation. Plaintiff informed defendant's maintenance staff of the problem and was assured that the problem would be fixed. Unable to close the gate, plaintiff parked his own car across the opening to block it. The next morning, plaintiff arrived at work and again attempted to close the gate. Unbeknownst to plaintiff, defendant's staff had not attended to the problem and the gate was still frozen. Defendant exerted additional force and, consequently, severely injured his back.

Defendant first argues that the circuit court improperly reversed the district court's order granting summary disposition because defendant did not owe a legal duty to plaintiff, a business invitee. We agree.

Possessors of land have a legal duty to protect their invitees from any unreasonable risk of harm caused by dangerous conditions of the land that the landowner knows or should know that the invitee will not discover, realize, or protect himself against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-610; 537 NW2d 185 (1995). Here, plaintiff was not exposed to an unreasonable risk of harm as a result of the gate being frozen shut as a result of snow and ice accumulation. Nonetheless, the danger was open and obvious and, given plaintiff's actions on January 21, defendant had no reason to foresee that plaintiff would attempt to close the gate himself on January 22 despite his knowledge of the danger. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 94; 485 NW2d 676 (1992). The circuit court erred in reversing the district court's grant of summary disposition for defendant.

Reversed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage