STATE OF MICHIGAN

COURT OF APPEALS

DOROTHY MACDONALD,

Plaintiff-Appellant,

v

BUILDERS SQUARE, INC.,

Defendant-Appellee.

UNPUBLISHED
November 18, 1997

No. 199096
Genesee Circuit Court
LC No. 95-038529-NI

Before: Griffin, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

While shopping for plants at defendant's establishment, plaintiff fell off the curb and injured herself. The plants were displayed along the sidewalk in front of the store, and were hung on racks which extended from the wall to within approximately two feet of the curb. Plaintiff brought suit against defendant, alleging that the configuration of the racks of plants created a narrow aisleway which, though obvious, could be forgotten by customers. Plaintiff thus argued that defendant's display created an unreasonably dangerous condition. In granting defendant's motion for summary disposition, the trial court noted that plaintiff was knowledgeable of the condition of the area, that she did not know why she fell, and that there was no evidence that the area was particularly dangerous.

The sole issue for this Court's determination is whether a business owner is liable for the fall of a customer invitee from a curb in front of the owner's establishment where the curb is open and obvious but the placement of the owner's display may distract customers from the obvious curb and cause them to fall. We review the court's grant of summary disposition de novo, *Singerman v Municipal Service Bureau*, 455 Mich 135, 139; 565 NW2d 383 (1997), and conclude that summary disposition was proper given the circumstances of this case.

A business invitor owes a duty to its customers 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). The duty to exercise ordinary care does not extend to conditions or

dangers so open and obvious that invitees can reasonably be expected to discover them. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 611; 537 NW2d 185 (1995). Similarly, an invitor is not required to warn of an open and obvious condition. *Riddle v McLouth Steel Products*, 440 Mich 85, 90-95; 485 NW2d 676 (1992). As a general rule, steps and differing floor levels are considered open and obvious. *Bertrand*, *supra* at 614. Nonetheless, even if a condition is open and obvious, the possessor may nevertheless need to exercise reasonable care to protect the invitee from danger if the circumstances make the situation unreasonably dangerous. *Singerman*, *supra* at 140; *Bertrand*, *supra* at 624. However, the Supreme Court has refused to consider a distracting display of merchandise a unique circumstance which would lessen the degree of care an individual must exercise and heighten the duty of an invitor. *Boyle v Preketes*, 262 Mich 629, 632-633; 247 NW 763 (1933); *Bertrand*, *supra* at 615.

Plaintiff claims that although the curb was open and obvious, the display racks placed within two feet of the curb created an unreasonable risk of harm. We disagree. Viewing the evidence in a light most favorable to plaintiff, we cannot find as a matter of law that the risk of harm was unreasonable. The record clearly establishes that the curb was open and obvious. As such, a reasonably prudent person would observe the curb and take appropriate care for his own safety. *Bertrand*, *supra* at 616. Plaintiff admitted she was within the area for twenty minutes prior to falling, that the area was well lit, and that the curb was painted a bright yellow. Furthermore, we find that the placement of the display racks, alone, did not render the curb an unreasonable risk of harm. Therefore, the trial court properly granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Richard Allen Griffin
/s/ David H. Sawyer
/s/ Peter D. O'Connell