STATE OF MICHIGAN

COURT OF APPEALS

DORRIS LIPE,

Plaintiff-Appellant,

v

JAMES ESSHAKI, d/b/a ESSCO DEVELOPMENT CO.,

Defendant-Appellee.

UNPUBLISHED
December 4, 1998

No. 201335
Wayne Circuit Court
LC No. 96-606015 NO

Before: Griffin, P.J., and Gage and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition pursuant to MCR 2.116 (C)(10). Plaintiff slipped and fell on a speed bump while on defendant's premises. We affirm.

We review de novo a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion relying on MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Spiek*, *supra*. The court considers the pleadings, affidavits, depositions, admissions and other documentary evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. *Id*.

Plaintiff contends that the trial court erred in granting defendant's motion for summary disposition when a genuine issue of material fact existed regarding whether the speed bump represented an open and obvious danger. Specifically, plaintiff contends that the speed bump on which she fell was not conspicuous to the casual observer because the yellow paint that covered the bump had faded.

A business invitor owes a duty to its customers to maintain its premises in a reasonably safe condition and to exercise ordinary care and prudence to keep the premises reasonably safe. *Schuster v Sallay*, 181 Mich App 558, 565; 450 NW2d 81 (1989). However, the possessor of land is not an absolute insurer of an invitee's safety. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495,

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

500; 418 NW2d 381 (1988). Where the dangers are known to the invitee or are

so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). In determining whether it is reasonable to expect that the invitee would discover the danger, one must inquire whether the average invitee with ordinary intelligence would have been able to discover the danger and the risk presented on casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

In the instant case, defendant owed plaintiff no obligation to warn her of the speed bumps. Plaintiff admitted in deposition testimony that she knew of the many speed bumps in the parking lot because she had been to the mall on several prior occasions, and that neither the parking lot nor the speed bumps appeared different on the day she fell than they had in the past. Plaintiff was able to identify in a photograph the speed bump on which she fell, admitted that it had "some" yellow paint on it, and conceded that had she been looking down, she could have seen the speed bump. The photographs attached to defendant's motion for summary disposition illustrate that the parking lot speed bumps appear yellow, in contrast to the parking lot's black asphalt surface, and plaintiff stated that her fall occurred during daylight hours. We conclude that any risk presented by the speed bumps was visible on casual inspection to the average invitee of ordinary intelligence. *Id*. Therefore, plaintiff not only knew of any risk of harm posed by the speed bumps, the speed bumps also constituted an open and obvious danger.

Plaintiff maintains that even if the bump was open and obvious, it was nevertheless unreasonably dangerous when pedestrians would be distracted by parking lot traffic from focusing on where they were walking. This Court has recognized that if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions to make the premises safe. *Bertrand v Alan Ford Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995). Reason to expect harm to the visitor from known or obvious dangers may arise, for example, when a landowner has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious. *Id*. at 611-612. In determining whether a condition qualifies as unreasonably dangerous, a court should consider any unique circumstances surrounding the area that added to the danger. *Id*. at 614.

Defendant had no reason to anticipate that mall pedestrians would stumble over the speed bumps in the mall parking lot roadway. Defendant painted pedestrian crosswalk areas running from the parking lot to the mall storefront sidewalk, presumably so that pedestrians like plaintiff could safely deal with mall traffic by crossing the roadway in an area free of speed bumps and other obstacles. Plaintiff acknowledged that she knew the painted white lines represented a pedestrian walkway, and that she could have utilized a pedestrian walkway to avoid the speed bumps. Given that defendant placed both the pedestrian walkways and the speed bumps as safety precautions to protect mall pedestrians and that speed bumps in a mall parking lot do not otherwise pose a unique risk of harm, the speed bumps did not represent an unreasonable risk of harm because defendant could not have reasonably expected that pedestrians would first disregard the pedestrian walkways, and second, fall over the unremarkable yellow speed bumps. Therefore, because defendant owed plaintiff no duty to protect her from the open

and obvious speed bumps,

id. at 610-611, we conclude that the trial court properly granted defendant summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Robert J. Danhof