STATE OF MICHIGAN

COURT OF APPEALS

ETHEL C. TAYLOR and JAMES W. TAYLOR, JR.,

Plaintiffs-Appellants,

v

HORIZON OUTLET CENTERS LIMITED PARTNERSHIP, HGI REALTY, INC., and HORIZON GROUP, INC.,

Defendants-Appellees,

and

QUALITY ASPHALT OF SAGINAW, INC. and MIG REALTY ADVISORS, INC.,

Defendants.

UNPUBLISHED
February 9, 1999

No. 203861
Saginaw Circuit Court
LC No. 96-013652 NI

Before: Fitzgerald, P.J., and Holbrook, Jr. and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants summary disposition, pursuant to MCR 2.116(C)(10), based on the conclusion that a sewer drain on which plaintiff Ethel Taylor[1] tripped was an open and obvious condition that did not present an unreasonable danger. We affirm.[2]

This Court reviews a trial court's grant or denial of a motion for summary disposition de novo. *Carlyon v Mutual of Omaha Ins Co*, 220 Mich App 444, 446; 559 NW2d 407 (1996). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court considers all documentary evidence in a light most favorable to the nonmoving party in order to determine whether there is a genuine issue with respect to any material fact, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), and whether the moving party was entitled to

judgment as a matter of law. *Smith v Globe Life Ins Co*, 223 Mich App 264, 270; 565 NW2d 877 (1997).

The parties do not contest that plaintiff was an invitee and therefore entitled to the highest standard of care. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Moreover, plaintiffs do not take issue on appeal with the trial court's determination that the danger was open and obvious. Rather, plaintiffs argue that the trial court erred in holding, as a matter of law, that the danger was not unreasonable despite its open and obvious nature.

An open and obvious condition may be deemed unreasonably dangerous when the condition is unusual because of its character, location, or surrounding conditions. *Bertrand, supra* at 611; *Spagnuolo v Rudds No 2, Inc*, 221 Mich App 358, 361; 561 NW2d 500 (1997). The invitor is then required to undertake reasonable precautions. *Bertrand, supra* at 611. Generally, if it cannot be said, as a matter of law, that an open and obvious danger will not create an unreasonable risk of harm, then the issue becomes what standard of care the possessor of land owes to the invitee. This question is for the jury to decide. *Id*.

Plaintiffs urge this Court to use a subjective test of unreasonable danger, taking into account plaintiff's age and sex. However, *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475, 499 NW2d 379 (1993), and *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995), dictate that an objective test be used. Therefore, it is not that defendants *could* have made the ridge more noticeable to plaintiff specifically, but whether an ordinary user upon casual inspection would have noticed the ridge as it was at the time and place plaintiff fell.

Plaintiffs presented no evidence to show that the sewer drain and the concrete ridge that surrounded it were in any way unusual or out of the ordinary. Plaintiff stated that had she been looking down while walking, she could have easily avoided the area where she fell. Like the plaintiff in *Novotney, supra* at 474-475, it is not relevant to the disposition of this matter whether plaintiff actually saw the sewer drain and concrete ridge. Pursuant to the reasoning of *Novotney*, the ridge was visible to a casual user upon ordinary inspection. Further the quarter- to one-half-inch ridge cannot be said to have created an unreasonable risk of danger despite its openness and obviousness.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell

[1] Because plaintiff James Taylor's interest in this case is derivative of that of Ethel Taylor, our use of the term "plaintiff" in the singular will refer to the latter exclusively.

[2] Our resolution of this case does not affect defendant Quality Asphalt of Saginaw, Inc., who stipulated to an order of dismissal from this appeal just before oral arguments.