

STATE OF MICHIGAN
COURT OF APPEALS

DENTON SORENSON and SANDRA
SORENSON,

UNPUBLISHED
April 27, 1999

Plaintiffs-Appellants,

v

MCLAREN REGIONAL MEDICAL CENTER,

No. 208302
Genesee Circuit Court
LC No. 96-047800 NO

Defendant-Appellee.

Before: Neff, P.J., and Kelly and Hood, JJ.

KELLY, J. (dissenting).

I respectfully dissent.

It is my belief that this case presents a genuine issue of material fact as to whether the rise or slope in the sidewalk created a hazardous condition which arguably was not reasonably discoverable by plaintiff. The complaint is that plaintiff was walking on the sidewalk toward the trash can located in the middle of the sidewalk. As he approached the trash can, plaintiff had to step to the right in order to bypass the obstruction. As he did so, plaintiff's foot struck the uneven portion of the sidewalk that came into contact with the handicap ramp. This uneven condition, brought into play by the trash can detour, apparently created the hazard which caused plaintiff to fall and injure himself.

I believe the jury could find that the uneven joining of the sidewalk and the handicap ramp was not an open and obvious condition apparent to a reasonably prudent person. During his deposition, plaintiff stated that as he approached the trash can the ramp and the sidewalk appear to blend making it difficult to determine if there was, in fact, a sharp decline. Also, defendant's director of environmental services stated in his deposition that the area in question does blend in and that the area is a hazard. Plaintiff's expert witness also testified through deposition that the area was unsafe. However, it was the trial court's conclusion that plaintiff did, in fact, see the hazard as he approached the ramp and that it was not unreasonable in nature. I would find that an invasion of the jury's province. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

It has long been accepted in courts of this state that under ordinary circumstances, people are encouraged to look out for their own safety when dealing with normal steps. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995). However, where there is something unusual about the steps, because of their character, location, or surrounding conditions, then the possessor of the land has a duty to exercise reasonable care. *Id.* at 617. Here, due to the blending of the sidewalk and ramp and the location of the trash can, this condition was not a normal occurrence found in everyday situations. Exacerbating the situation, as alluded to by defendant's director of environmental services, is the fact that invitees entering the hospital through the emergency room entrance, and therefore using this sidewalk, are often in an agitated state of mind, thus, less likely to notice the declining sidewalk and ramp than those in ordinary circumstances.

Therefore, I conclude that the testimony presented to the trial court created a genuine issue of material fact concerning whether the condition in question was an open and obvious hazard. I would reverse.

/s/ Michael J. Kelly