STATE OF MICHIGAN

COURT OF APPEALS

RONALD P. WIEGAND,

Plaintiff-Appellant,

v

WAL-MART STORES, INC., d/b/a SAM'S CLUB STORE NO. 186659,

Defendant-Appellee.

UNPUBLISHED
November 3, 2000

No. 214433
Oakland Circuit Court
LC No. 96-528587 NO

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant in this premises liability action. We affirm.

Plaintiff, a truck driver delivering merchandise to defendant's Sam's Club store in Madison Heights, was allegedly injured when he descended from the cab of his truck and lost his footing after stepping into a crack in the parking lot. Plaintiff filed this suit against defendant alleging failure to warn of, inspect, maintain, and repair a dangerous condition.

Defendant moved for summary disposition arguing that any danger posed by the parking lot was open and obvious, such that defendant did not owe a duty to plaintiff. In granting defendant's motion for summary disposition, the trial court noted that plaintiff's attorney conceded that inadequate lighting did not play a role in plaintiff's not seeing the crack. Because there was nothing unusual about the parking lot, the trial court held that defendant did not owe plaintiff a duty to warn plaintiff of or to protect plaintiff from any risk associated with the open and obvious crack in the parking lot.

On appeal, plaintiff argues that the trial court improperly granted defendant's motion because a genuine issue of material fact exists regarding whether the danger presented by the parking lot was so obvious that a reasonable person in plaintiff's position should have discovered it. We disagree. This Court reviews a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition based on MCR 2.116(C)(10), this Court must review the documentary evidence and determine if a party was

entitled to a judgment as a matter of law, or whether a genuine issue of material fact exists. *Id.* This Court draws all reasonable inferences in the light most favorable to the nonmoving party. *Skinner v Square D Co,* 445 Mich 153, 162; 516 NW2d 475 (1994).

Michigan courts recognize the "open and obvious" danger doctrine. *Novotney v Burger King Corp (On Remand),* 198 Mich App 470, 474-475; 499 NW2d 379 (1993). This doctrine obviates the duty to warn or protect another when the alleged danger is so obvious that a person is reasonably expected to discover it. *Riddle v McLouth Steel Products Corp,* 440 Mich 85, 96; 485 NW2d 676 (1992). However, the doctrine is not absolute. Though open and obvious, a landowner must nonetheless exercise reasonable care to protect invitees from an unreasonable risk of harm caused by such a dangerous condition if the landowner anticipates invitees will not protect themselves against the danger. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 613; 537 NW2d 185 (1995). Public policy encourages people to take reasonable care for their own safety. Thus, landowners are not required to make ordinary parking lots "foolproof" or prevent careless persons from hurting themselves. *Id.*

The trial court appropriately applied the "open and obvious" doctrine to these facts. Plaintiff describes the condition that allegedly caused his injury as a four and one half inch rut extending twenty to thirty feet across the parking lot. It is clear from the photographs of the parking lot that an average person of ordinary intelligence, watching where he was going, would have discovered the crack and would have taken necessary steps to avoid it. The risk of losing his footing would have been eliminated by plaintiff's awareness of the crack. *Hottmann v Hottmann,* 226 Mich App 171, 176; 572 NW2d 259 (1997). As noted, plaintiff's attorney conceded during oral argument that lighting did not play a role in plaintiff's not seeing the crack. Accordingly, the trial court properly concluded that the crack was an open and obvious condition.

Having concluded that the crack in the parking lot was open and obvious, the trial court properly determined that there was no genuine issue of material fact if the danger was unreasonable. Plaintiff failed to show any unusual aspects about the parking lot's character, location or surrounding conditions, which would trigger defendant's duty to warn him of an open and obvious danger. *Bertrand, supra,* 449 Mich 616-617. There was no rain or snow at the time of the injury, and the area was well lit. Moreover, plaintiff has not demonstrated that he had no alternative but to encounter the danger posed by the crack in the parking lot. Accordingly, defendant had no duty to warn or make safe the open and obvious condition of the crack in its parking lot, which allegedly caused plaintiff's injury.

In reviewing the evidence, and drawing all reasonable inferences in plaintiff's favor, we conclude that there is no genuine issue of material fact if defendant had reason to expect that plaintiff would nevertheless suffer physical harm despite the open and obvious nature of the dangerous condition. Therefore, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Patrick M. Meter