STATE OF MICHIGAN

COURT OF APPEALS

MARCELLA WARNER,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee.

UNPUBLISHED
December 12, 2000

No. 212908
Macomb Circuit Court
LC No. 97-001094-NO

Before: White, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting summary disposition in favor of defendant, pursuant to MCR 2.116(C)(10), in this action for damages resulting from a slip and fall at a Meijer's store. We affirm.

While plaintiff was shopping in the grocery section, she walked down a wide produce aisle that had a light-colored floor. There were produce bins in the center of the aisle. Plaintiff had left her shopping cart at the end of the aisle, and her hands were empty. After crossing from one side of the produce bins to the other and walking two to three steps, plaintiff slipped and fell. After she fell, she noticed that she was soaking wet and that the floor was covered with dark, muddy water. The water was clearly visible and extended down the aisle about eighty feet. After plaintiff got up, she saw a Meijer employee standing at the opposite entrance of the aisle holding a mop. Plaintiff walked up to the employee and observed, for the first time, a caution sign. Plaintiff had not seen the caution sign when she entered the aisle because her view was obstructed by the produce bins.

Plaintiff filed suit to recover for her personal injuries under theories of negligence, nuisance, and loss of economic damages. The circuit court granted Meijer's motion for summary disposition on the ground that the dark and muddy water constituted an open and obvious danger that plaintiff could have discovered upon casual inspection.

On appeal, plaintiff contends that the circuit court erred by holding as a matter of law that defendant owed no duty because the dark and muddy water was open and obvious. We disagree. We review the circuit court's grant of summary disposition de novo. *Smith v Globe Life Ins Co,* 460 Mich 446, 454; 597 NW2d 28 (1999). The circuit court considers pleadings, affidavits,

depositions, admissions, and documentary evidence filed or submitted by the parties in the light most favorable to the nonmovant. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). This Court considers the substantively admissible evidence proffered in opposition to the motion. *Id.* at 121. If the proffered evidence fails to establish a genuine issue regarding any material fact, summary disposition is properly granted. *Id.* at 120.

The duty of care owed to an invitee does not extend to conditions from which an unreasonable risk cannot be anticipated or to dangers so obvious that an invitee can be expected to discover them. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 195; 600 NW2d 129 (1999). An invitor must warn of hidden defects, but is not required to eliminate or warn of open and obvious dangers unless the invitor should anticipate the harm despite the invitee's knowledge of it. *Riddle v McLouth Steel Products*, 440 Mich 85, 90-95; 485 NW2d 676 (1992); *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 495; 595 NW2d 152 (1999). Whether a danger is open and obvious depends on whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995).

After reviewing plaintiff's deposition testimony that the aisle was covered with dark and muddy water that was clearly visible against the light-colored floor, and that she had taken two to three steps into the aisle before she fell, the circuit court concluded that defendant did not owe plaintiff a duty because the risk was so open and obvious upon casual inspection that it is reasonable to expect plaintiff to have discovered it.

Plaintiff argues on appeal that a dairy case and movable displays diverted her attention from the floor so that she did not discover the dark water until after she fell. Plaintiff did not so testify at deposition. Further, the relevant inquiry is whether an ordinary user, upon casual inspection, should reasonably have discovered the danger. See *Novotney v Burger King (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). Plaintiff testified that she had left her shopping basket at the end of the aisle, that she had taken two to three steps before falling, and that her vision of the aisle was not obstructed. She also testified that the dark water was clearly visible. This testimony points to the conclusion that a casual inspection should reasonably have disclosed the danger. Plaintiff's claim that her view of the warning cone was obstructed is also unavailing because the muddy water was itself open and obvious. Thus, we conclude that the circuit court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ Helene N. White
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell