STATE OF MICHIGAN

COURT OF APPEALS

NOURA OTHMAN,

Plaintiff-Appellant,

v

OAKWOOD HEALTH CARE, INC,

Defendant-Appellee.

UNPUBLISHED
December 19, 2000

No. 215852
Wayne Circuit Court
LC No. 97-712827-NO

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Plaintiff, an invitee at defendant's medical center, fell and injured her ankle while crossing a median located on defendant's property. She brought this premises liability action against defendant, alleging that the median was negligently maintained. The case proceeded to trial, and after plaintiff's proofs, the trial court granted defendant's motion for a directed verdict. Plaintiff appeals as of right. We affirm.

Plaintiff first argues that the trial court erred in directing a verdict for defendant on the basis that the danger encountered was open and obvious. A court may grant a motion for a directed verdict if the evidence did not establish a prima facie case and reasonable persons would agree that there was an essential failure of proof. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995). When ruling on the propriety of a lower court's directed verdict, this Court reviews the evidence presented up to the time of the motion in the light most favorable to the nonmoving party. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998); *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000).

We conclude that the trial court correctly directed a verdict for defendant because the risk of harm to plaintiff was indeed open and obvious as a matter of law. See *Hughes v PMG Building, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). The risk of falling on the allegedly uneven dirt and sand on which plaintiff alleged that she slipped would be easily apparent to a reasonable person. See *id.*

Plaintiff additionally argues that even if the median posed an open and obvious danger, reversal is nonetheless required because special aspects of the median created an unreasonable risk of harm despite the open and obvious nature of the danger.

If an obvious risk of harm remains unreasonable – in other words, if an invitor anticipates harm in spite of the obviousness of the danger – the invitor may be obligated to take measures for invitees' protection. See *Bertrand v Alan Ford Inc*, 449 Mich 606, 611, 618; 537 NW2d 185 (1995), and *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). In *Hottman v Hottman*, 226 Mich App 171, 176; 572 NW2d 259 (1997), the Court framed this inquiry as whether "the risk of falling . . . is eliminated by awareness of the hazard." Here, awareness of the hazard would indeed eliminate the risk of falling. A reasonable person, after noticing the area of allegedly uneven dirt and sand in the median, would walk around the area so as to avoid falling. The trial court properly concluded that there were no special circumstances about the median's character, location, or surrounding conditions sufficient to submit the case to the jury.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Patrick M. Meter