STATE OF MICHIGAN

COURT OF APPEALS

SHARON LEMERAND and KENNETH LEMERAND, Plaintiffs-Appellants, v WENDY'S INTERNATIONAL, INC., Defendant-Appellee.	UNPUBLISHED January 16, 2001 No. 218136 Wayne Circuit Court LC No. 98-817395-NO

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Plaintiffs Sharon and Kenneth Lemerand appeal as of right from the trial court's order granting defendant Wendy's International, Incorporated's motion for summary disposition. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Sharon Lemerand went to a restaurant owned by Wendy's to perform maintenance services. As she walked to her car to retrieve supplies, she tripped on a raised portion of the sidewalk. Plaintiffs filed suit alleging that Wendy's failed to maintain the premises in a reasonably safe condition, and failed to warn of a dangerous and unsafe condition. Wendy's moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that the sidewalk did not present an unreasonable risk of harm or, in the alternative, that it owed no duty to warn because the condition of the sidewalk was open and obvious. The trial court granted the motion pursuant to MCR 2.116(C)(10), finding that reasonable persons could not disagree as to whether the sidewalk presented an unreasonable risk of harm. The trial court did not rely on the open and obvious danger doctrine to find in favor of Wendy's.

* Circuit judge, sitting on the Court of Appeals by assignment.

II. Negligence In The Context Of Premises Liability

A. Standard Of Review

Plaintiffs argue that the trial court erred by granting Wendy's motion for summery disposition. We review a trial court's decision on a motion for summary disposition de novo.[1]

B. A Prima Facie Case Of Negligence

"To establish a prima facie case of negligence, a plaintiff must introduce evidence sufficient to prove that (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach of its duty was a proximate cause of the plaintiff's injuries, and (4) the plaintiff suffered damages."[2] At issue in this case is whether plaintiffs demonstrated that there was a genuine issue of material fact in dispute regarding Wendy's duty.

A land possessor has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land or may be held liable for injuries that result.[3] However, this duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated.[4] Conversely, if a danger is open and obvious, there is no duty to warn or protect the invitee.[5]

The open and obvious nature of the alleged harmful condition on the land is dispositive in this case. At the location where Sharon Lemerand tripped, the slabs of the sidewalk were not broken, cracked, or sloped. The point of greatest unevenness between the slabs was located near the curb. That area was often obscured by parked vehicles. By Sharon Lemerand's own admission, she tripped in the middle of the sidewalk, which was unobscured. The weather conditions on the day of the accident were warm and dry. Had Sharon Lemerand observed the sidewalk, any risk of harm would have been obviated.[6] Further, the nature of the sidewalk's unevenness was not unreasonable because of the slight difference, only about one inch, between slabs. Thus, summary disposition was proper.

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

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[1] *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

[2] *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992).

[3] *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

[4] *Id*.

[5] *Milliken v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 495-497; 595 NW2d 152 (1999).

[6] *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360-361; 561 NW2d 500 (1997).