

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLY ROULT,
Plaintiff-Appellant,

UNPUBLISHED
July 13, 2001

v

REDFORD LANES, INC.,
Defendant-Appellee.

No. 222173
Wayne Circuit Court
LC No. 99-905600-AV

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the circuit court order affirming the grant of summary disposition to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this negligence action after she injured her foot in a fall in defendant's lounge. Plaintiff says she did not see a step in the dimly lit lounge, and fell. Defendant moved for summary disposition, asserting that the danger was open and obvious. The district court granted the motion, finding that defendant had no duty where the step was open and obvious and it was not unusual. The circuit court affirmed, finding that plaintiff failed to show any unusual circumstances that would render the open and obvious step a dangerous condition or an unreasonable risk.

Possessors of land have a legal duty to exercise reasonable care to protect their invitees from dangerous conditions on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). If a condition is open and obvious, this duty does not apply unless the condition poses an unreasonable risk of harm. *Milliken v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 498-499; 595 NW2d 152 (1999). The test for an open and obvious danger is whether an average user with ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

To avoid summary disposition, plaintiff was required to present evidence that despite the open and obvious nature of the step, it posed an unreasonable risk of harm. *Weakley v Dearborn Heights*, 240 Mich App 382, 386; 612 NW2d 428 (2000). Plaintiff failed to do so. Plaintiff knew that a step was present, and she had traversed the step on the way into the lounge. Steps

and differing floor levels are not ordinarily actionable unless unique circumstances surrounding the area in issue made the situation unreasonably dangerous. *Id.* Plaintiff failed to show unique circumstances that rendered the step dangerous.

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy