STATE OF MICHIGAN

COURT OF APPEALS

GLENNA LYNCH,

Plaintiff-Appellant,

v

ROBERT COSTELLO and MARJORIE COSTELLO,

Defendants-Appellees.

UNPUBLISHED
August 24, 2001

No. 224090
Oakland Circuit Court
LC No. 99-012439-NO

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Because plaintiff went to defendants' home as a social guest, she was a licensee. *Taylor v Laban*, 241 Mich App 449, 453; 616 NW2d 229 (2000). A landowner does not have a duty of inspection or affirmative care to make the premises safe for the licensee's visit. He owes the licensee a duty only to warn of any hidden dangers he knows or has reason to know of, if the licensee does not know or have reason to know of those dangers. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). "Hence, a possessor of land has no obligation to take any steps to safeguard licensees from conditions that are open and obvious." *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001). An open and obvious danger

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

is one that is known to the visitor or is so obvious that the visitor might reasonably be expected to discover it, i.e., one that an average user with ordinary intelligence would have been able to discover upon casual inspection. *Riddle v McLouth Steel Products Corp,* 440 Mich 85, 96; 485 NW2d 676 (1992); *Novotney v Burger King Corp (On Remand),* 198 Mich App 470, 475; 499 NW2d 379 (1993).

The pictures of the defect in the walkway show that it is readily apparent to all who care to look. Plaintiff admitted that she didn't see it because she wasn't looking where she was walking. Because plaintiff failed to provide evidence of special aspects of the condition to justify imposing liability on defendant despite the open and obvious nature of the danger, *Lugo v Ameritech Corp,* ___ Mich ___; ___ NW2d ___ (No. 112575, decided 7/3/01), the trial court did not err in concluding that the open and obvious doctrine precludes liability. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 611; 537 NW2d 185 (1995).

We reject plaintiff's claim that defendants should be held liable because the danger created by the raised section of pavement remained unreasonable despite its open and obvious nature. Such liability is premised on the existence of a duty to make the premises safe for a visitor, a duty not owed to a licensee. *Stitt, supra; Pippin, supra.*

We decline to consider plaintiff's claim that the open-and-obvious-danger rule has been effectively abolished by statutes dealing with the reduction of a plaintiff's damages according to her percentage of fault, MCL 600.2959, and apportionment of liability among several tortfeasors according to their percentage of fault, MCL 600.2957(1), because plaintiff failed to preserve this issue by raising it below. *Kosch v Kosch,* 233 Mich App 346, 353-354; 592 NW2d 434 (1999).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel