

STATE OF MICHIGAN
COURT OF APPEALS

MARY GAYE CARLY and FRANCIS GIRARD
CARLY,

UNPUBLISHED
November 2, 2001

Plaintiffs-Appellees,

v

THOMAS BOAKS and SANDRA BOAKS,

No. 225848
Macomb Circuit Court
LC No. 1999-002500-CZ

Defendants-Appellants.

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

MEMORANDUM.

Defendants appeal from the circuit court's opinion and order denying their motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs sued defendants for injuries sustained by plaintiff Mary Gaye Carly when she tripped and fell on a slight rise between the concrete slabs of defendants' residential driveway. The evidence presented showed that defendants' driveway was a completely ordinary driveway made out of concrete slabs with the typical spaces and slight differences in elevation between slabs. There was no evidence that the unevenness of the slabs was hidden or concealed. Plaintiff admitted in her testimony that she was aware that concrete slabs were frequently uneven and that she could have noticed the gap and avoided tripping if she had looked at it. There was no genuine issue of material fact that the condition of the driveway was open and obvious and created a risk of harm solely because plaintiff did not discover the condition and realize its danger when she should have. Defendants are entitled to summary disposition pursuant to MCR 2.116(C)(10). *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995); *Prebenda v Tartaglia*, 245 Mich App 168, 169; __ NW2d __ (2001).

Reversed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker

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