

STATE OF MICHIGAN
COURT OF APPEALS

JULIA SHERMAN,

Plaintiff-Appellant,

v

HENRY FORD HOSPITAL CARE SYSTEMS,
d/b/a HENRY MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED
November 6, 2001

No. 224786
Wayne Circuit Court
LC No. 98-830290-NO

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was entering defendant's facility when she tripped on a raised portion of the sidewalk and fell to the ground, sustaining injuries. Plaintiff filed suit alleging that defendant failed to maintain the premises in a reasonably safe condition, and failed to warn of a dangerous and unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(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, finding that an issue of fact did not exist as to whether the condition was open and obvious.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty was a proximate cause of the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v KMart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992).

A possessor of land 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. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). A possessor of land may be held liable for

injuries resulting from negligent maintenance of the land. *Id.* at 610. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Id.* at 610-613. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If the risk of harm from a dangerous condition remains unreasonable, in spite of the fact that it is open and obvious or that the invitee has knowledge of it, the possessor of land may be required to take reasonable care. *Bertrand, supra*, at 611.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition. She asserts that the open and obvious danger doctrine, which is based on an average user standard, was inapplicable because defendant's facility catered to persons with physical and/or emotional difficulties, and not average users. We disagree and affirm the trial court's decision. Plaintiff's argument that the danger associated with the condition of the sidewalk must be judged in light of the special circumstances attached to some users of defendant's facility is without merit. Whether a condition is open and obvious is judged by an objective standard, i.e., the average user with ordinary intelligence. *Novotney, supra*, at 475. The evidence showed that the sidewalk elevation in the area where plaintiff fell was clearly visible. It is reasonable to conclude that plaintiff would not have been injured had she been watching the area in which she was walking. *Millikin v Walton Manor Mobile Home Park, Inc.*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Plaintiff did not come forward with sufficient evidence to create a question of fact as to whether an average person with ordinary intelligence would have discovered the condition upon casual inspection. The trial court did not err in concluding that the condition on defendant's premises was open and obvious, and properly granted summary disposition in favor of defendant.

Affirmed.

/s/ William C. Whitbeck
/s/ Janet T. Neff
/s/ Joel P. Hoekstra