

STATE OF MICHIGAN
COURT OF APPEALS

DICKIE J. MAHLUM and SANDRA A.
MAHLUM,

UNPUBLISHED
March 1, 2002

Plaintiffs-Appellants,

v

No. 231893
Chippewa Circuit Court
LC No. 98-003615-NI

ROGER ROE, d/b/a CENTURY 21
ADVANTAGE PLUS,

Defendant,

and

LYNNWOOD COOK and RAYA COOK,

Defendants-Appellees.

Before: Bandstra, P.J., and Murphy and Murray, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant Cooks' motion for summary disposition under MCR 2.116(C)(10) in this slip and fall case. We affirm.

Plaintiff Dickie Mahlum was injured when he slipped on snow-covered ice while a real estate agent was showing him defendant Cooks' property. The Cooks had been in Florida for four months at the time of the fall. The trial court granted defendants' motion for summary disposition, finding that any danger was open and obvious.

A possessor of land has a duty to exercise reasonable care for the protection of an invitee. *Anderson v Wiegand*, 223 Mich App 549, 553; 567 NW2d 452 (1997). A possessor must take reasonable measures within a reasonable period after an accumulation of snow and ice to diminish the hazard of injury to an invitee. *Id.*, 553-554. However, the possessor of land is not an absolute insurer of the safety of an invitee. *Id.*, 554.

Premises liability is conditioned upon the presence of both possession and control over the land because the person in possession is normally best able to prevent any harm to others. *Id.*, 555. The law will look to the party actually in control for liability for injuries to third parties. *Id.*, 556. The Cooks ceded possession and control of their property to the agent, and

were not in a position to prevent harm to plaintiffs. There is no basis for holding them liable for the alleged negligence of their agent. *Id.*

Plaintiffs failed to show that defendants knew, or had reason to know, that there was ice under the snow triggering a duty to warn. *Altairi v Alhaj*, 235 Mich App 626, 638; 599 NW2d 537 (1999). If a danger is open and obvious, the need to warn is obviated. *Id.*, 639. A possessor of land must either know of the danger or have reason to know of the danger, but the danger cannot be open and obvious. *Id.* Where defendants were not in Michigan, they had no reason to know that there was ice under the snow.

Affirmed.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Christopher M. Murray