STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINA SOLES and NATHAN SOLES,

Plaintiffs-Appellants,

v

LINDA BEARDSLEE and LEROY BEARDSLEE, d/b/a BEARDSLEE'S RESTAURANT,

Defendants-Appellees.

UNPUBLISHED
July 19, 2002

No. 232159
Montcalm Circuit Court
LC No. 00-000278-NO

Before: Talbot, P.J., and Cooper and D.P. Ryan*, JJ.

PER CURIAM.

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

Christina Soles was walking on the sidewalk toward the entrance to defendants' restaurant when she noticed a person leaving the restaurant. As she continued to walk she tripped on a crack in the sidewalk and fell to the ground, sustaining injuries.

Plaintiffs filed suit alleging that defendants negligently failed to maintain the premises in a safe condition and to warn of the dangerous and unsafe condition. The complaint also alleged loss of consortium. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing it had no duty to warn Christina Soles of the condition of the sidewalk because the condition was open and obvious. The trial court granted the motion, finding 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 proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

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

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

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 must take reasonable care. *Bertrand, supra* at 611.

Plaintiffs argue the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. The crack on which Christina Soles tripped was large and ran the entire width of the sidewalk. The claim she did not notice the crack is irrelevant. *Novotney, supra* at 477. It is reasonable to conclude that Christina Soles 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).

Plaintiffs 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 the crack in the sidewalk constituted an open and obvious danger.

Furthermore, we find plaintiffs' argument that even if the condition was open and obvious it still presented an unreasonable risk of harm is without merit. Plaintiffs erroneously assert the facts in this case are substantially similar to those in *Bertrand, supra*. In that case, the walkway off of which the plaintiff fell was elevated and ran along the side of a congested area. Vending machines obscured part of the walkway. Here, the sidewalk was not elevated, and the crack was not obscured. No obstacles prevented a person from moving out of the way of another person using the sidewalk. Had Christina Soles simply watched her step, any risk of harm would have been obviated. *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997). Summary disposition was proper.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan