

STATE OF MICHIGAN
COURT OF APPEALS

DEREK HOOVER,

Plaintiff-Appellant,

v

PREMIUM SPORTS, INC., d/b/a TOTAL
SPORTS,

Defendant-Appellee.

UNPUBLISHED

August 6, 2002

No. 231259

Macomb Circuit Court

LC No. 98-004041-NO

Before: Murray, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Plaintiff appeals as of right an order granting defendant summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this premises liability action after injuring himself while walking in defendant's parking lot. The parking lot pavement was broken and torn up. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact), arguing that the condition was open and obvious and it owed plaintiff no duty with respect to the defective condition of the parking lot.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition. We disagree.

Defendant owed plaintiff a duty to protect him from the unreasonable risk of harm presented by dangerous conditions of the land that it knew its invitees would not discover, realize or protect themselves against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). As revealed in the photographs submitted by defendant, an average person of ordinary intelligence would have noticed the deteriorating condition of the parking lot upon casual inspection, and therefore the condition is open and obvious. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). Because defendant has not established the existence of special aspects of the condition to demonstrate that despite its open and obvious nature the condition was unreasonably dangerous, defendant owed plaintiff no duty. *Bertrand, supra* 449 Mich 609-611, 616-617; *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001). The trial court therefore properly granted defendant summary disposition pursuant to MCR 2.116(C)(10) on the basis that no genuine issue of material fact exists and defendant was

entitled to judgment as a matter of law. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001).

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra