STATE OF MICHIGAN

COURT OF APPEALS

CAROLYN WININGER,

Plaintiff-Appellant,

v

VINCENT ALLEN and CARLA ALLEN,

Defendants-Appellees.

UNPUBLISHED
February 19, 2004

No. 243833
Macomb Circuit Court
LC No. 01-004181-NO

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiff appeals 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).

Plaintiff, who is defendant Carla Allen's mother, tripped as she was walking down defendants' driveway and fell to the ground, sustaining injuries. She filed suit alleging that she tripped on a raised slab of concrete and that defendants negligently failed to maintain their property in a reasonably safe condition and to warn of the unsafe condition. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that they had no duty to warn plaintiff of the condition of the driveway because it was open and obvious, and that plaintiff could only speculate as to the cause of her fall. The trial court granted the motion, finding that while the cause of plaintiff's fall was not speculative, reasonable minds could not differ on the issue of whether the condition was open and obvious.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

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).

A possessor of land has a duty to exercise reasonable care to protect an invitee[1] 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).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*., 612. 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). However, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Plaintiff acknowledged that while the area in which she was walking when she fell was shady and grass was growing in the crack in the driveway, nothing obscured her view of the area. She admitted the defect was readily visible in photographs. The fact that plaintiff claimed she did not see the crack in the driveway on the day she fell is irrelevant. *Novotney*, *supra*, 477. Moreover, plaintiff acknowledged that she was not looking at the driveway as she walked, but rather was looking ahead at her car. 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). The evidence did not create an issue of fact as to whether an average person with ordinary intelligence could not have discovered the condition upon casual inspection. The trial court did not err in concluding that the condition of the driveway was open and obvious. *Novotney*, *supra*, 474-475. No special aspects made the condition unreasonably dangerous in spite of its open and obvious nature. *Lugo*, *supra*. Had plaintiff 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).

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens

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[1] For purposes of the motion for summary disposition, defendants did not challenge plaintiff's assertion that she was on their premises as an invitee. However, a social guest is a licensee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). A possessor of land has no duty to take steps to safeguard a licensee from an open and obvious danger. *Pippin v Atallah*, 245 Mich App 136, 142; 626 NW2d 911 (2001).