

STATE OF MICHIGAN
COURT OF APPEALS

MARY ANN ZOPPA,

Plaintiff-Appellant,

v

GREAT LAKES PROPERTY GROUP TRUST,
d/b/a/ OXFORD PLACE APARTMENTS,

Defendant-Appellee.

UNPUBLISHED
November 2, 2004

No. 249338
Kent Circuit Court
LC No. 02-03982-NI

Before: Neff, P.J., and Smolenski and Schuette, JJ.

SCHUETTE, J. (*dissenting*).

Plaintiff in this premises liability action appeals as of right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). The majority would reverse on the grounds that a genuine issue of material fact remains as to whether the depression in the grass created an unreasonable risk of harm. I believe that summary disposition was proper because I do not believe that reasonable minds could differ. Uneven ground in a grassy area is a common and known risk and does not create an unreasonable risk of harm. I would affirm.

In the instant case, no evidence exists to suggest that the hole in which plaintiff stepped posed an unreasonable risk of harm. I believe the trial court correctly determined that there was no question of fact. The parties both agree that plaintiff was injured when she tripped in a twelve inch depression in a grassy area maintained by defendant. Contours in unpaved surfaces are the type of everyday occurrence that people encounter, under most circumstances, a reasonably prudent person will look where she is going, will observe the variation in landscape, and will take appropriate care for her own safety. Under ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary grassy areas "foolproof." Therefore, the risk of harm is not unreasonable. See *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-61; 537 NW2d 185 (1995). Only if the proofs create a question of fact that the risk of harm was unreasonable, the existence of duty as well as breach become questions for the jury to decide. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). Here, I disagree with the majority's determination that because the depression was not open and obvious, the issue of whether it created an unreasonable risk of harm must go to the finder of fact. I would find that reasonable minds could not differ as to whether there was an unreasonable risk of harm.

I would affirm.

/s/ Bill Schuette