STATE OF MICHIGAN

COURT OF APPEALS

DANA SARAZIN,

Plaintiff-Appellant,

v

GIBRALTAR PHARMACY, INC., d/b/a SAV MOR #16,

Defendant-Appellee.

UNPUBLISHED
December 22, 2005

No. 264183
Wayne Circuit Court
LC No. 04-427445-NO

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm.

Plaintiff drove to defendant's store and parked in a handicapped parking spot[1] directly in front of the store. She parked in the spot immediately next to the curb. Plaintiff exited her vehicle via the driver's door and entered the store without incident. She exited the store carrying at least one bag, and approached the passenger side of her vehicle in order to open the door for her granddaughter. Plaintiff lost her footing in an uneven area where the paved parking surface met the curb, fell to the ground, and sustained injuries.

Plaintiff filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe condition by eliminating uneven surfaces and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it owed no duty to plaintiff because the condition was open and obvious, and that no special aspects made the condition unreasonably dangerous in spite of its open and obvious nature. The trial court agreed with defendant and granted the motion.

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). A possessor of

[1] Plaintiff received social security disability benefits due to complications from a stroke, a heart attack, and back problems.

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. 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*. at 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).

The trial court did not err in granting summary disposition. Plaintiff lost her footing on an uneven spot at the intersection of the parking surface and the curb. Photographs of the parking area show that the parking surface and the curb are different colors, and that the difference in height between the parking surface and the curb is clearly visible upon casual inspection. No evidence showed that plaintiff's view of this area was obscured for any reason due to the condition itself. The fact that plaintiff did not actually observe the condition prior to the accident is irrelevant. *Novotney*, *supra* at 477. 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). Plaintiff did not produce sufficient evidence to 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 was open and obvious.

Plaintiff's argument that even if the condition was open and obvious it remained unreasonably dangerous is without merit. Her failure to watch the area in which she was walking was not a special aspect of the condition itself. Moreover, plaintiff could have avoided the area by re-entering her vehicle via the driver's side door.[2] Plaintiff failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. *Lugo*, *supra*. Had plaintiff 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 correct.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood

[2] Plaintiff acknowledged that when she arrived at defendant's store, her granddaughter exited the vehicle via the driver's side door.