STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN LANPHAR, Plaintiff-Appellant,	UNPUBLISHED October 25, 2007
v	No. 275124 Oakland Circuit Court
SHERRY SHISLER, Defendant-Appellee.	LC No. 2005-067048-NO

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff slipped and fell on defendant's front lawn. Plaintiff was on defendant's property pursuant to his job as a carpet installer. There was no walkway from defendant's driveway to the house entrance; rather, the front door was beyond a low porch, partially bordered by a gravel flowerbed, that was itself only accessible across defendant's front lawn. It is not clear whether there was any snow on the lawn at the time, but plaintiff was aware that the lawn was wet. Plaintiff alleged claims for premises liability and nuisance. The trial court dismissed the premises liability claim, finding that the hazard at issue was open and obvious and that there were no special aspects that made it unreasonably dangerous.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Questions of law are reviewed de novo on appeal. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002).

Plaintiff first argues that, because he asserted a violation of a statutory duty, the trial court erred in finding the open and obvious doctrine applicable. We disagree.

The open and obvious doctrine cannot be used to avoid liability for dereliction of a specific statutory duty. See *Jones v Enertel, Inc*, 467 Mich 266, 269; 650 NW2d 334 (2002). However, plaintiff only contends that defendant was required by a city ordinance to prevent her porch roof from discharging water "in a manner that creates a public nuisance." Presuming the rule regarding statutory duties applies to city ordinances, and further presuming that the

conditions at issue in this matter were, in fact, caused by water being discharged from defendant's roof, plaintiff has not explained how the conditions constituted a public nuisance. Plaintiff instead relies on his expert's conclusory opinion that defendant's conduct created a nuisance. However, "the duty to interpret and apply the law has been allocated to the courts, not to the parties' expert witnesses," *Hottmann v Hottmann,* 226 Mich App 171, 179; 572 NW2d 259 (1997), who are not qualified to interpret and apply the law. *Reeves v Kmart Corp,* 229 Mich App 466, 475; 582 NW2d 841 (1998). We have been presented with no evidence identifying any common right enjoyed by the general public that was affected by the discharge of water from defendant's porch roof. See *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995). Therefore, the trial court properly declined to find the open and obvious doctrine inapplicable.

Plaintiff next contends that the trial court erred in dismissing his claim on the basis that the hazard at issue was open and obvious and did not present any "special aspects." We disagree.

It is undisputed that plaintiff was on defendant's premises for the commercial purpose of installing carpet for defendant, so he was an invitee. Defendant therefore owed plaintiff the duty "to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Kenny v Kaatz Funeral Home, Inc,* 264 Mich App 99, 105; 689 NW2d 737 (2004), rev'd on other grounds 472 Mich 929 (2005). "However, where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee." *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). In determining whether a condition is open and obvious, the focus is on the condition itself and whether an average person would have noticed it on casual inspection, not whether the plaintiff himself was looking at it. *Lugo v Ameritech Corp, Inc,* 464 Mich 512, 524; 629 NW2d 384 (2001); *Bertrand v Alan Ford, Inc,* 449 Mich 606, 611; 537 NW2d 185 (1995); *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 11; 574 NW2d 691 (1997).

According to plaintiff's contentions, and with the evidence viewed in the light most favorable to plaintiff, he slipped on an accumulation of slush that had accumulated in one spot on defendant's lawn in front of defendant's porch. Plaintiff, a Michigan native, estimated the temperature at the time of his fall to be approximately 35 degrees, and he admitted that he knew there was slush on the roads, he knew that defendant's grass was wet, and after his fall he looked down and saw the slush. The slush on which plaintiff slipped was therefore readily apparent to a casual observer, and we conclude that the general surrounding conditions would have alerted an average Michigan native to the possibility that defendant's lawn was potentially treacherous. This is especially the case given the general rule in Michigan that "absent special circumstances, the hazards presented by snow and ice are open and obvious," *Teufel v Watkins,* 267 Mich App 425, 428; 705 NW2d 164 (2005); see also *Ververis v Hartfield Lanes*, 271 Mich App 61; 718 NW2d 382 (2006).

The exception to the open and obvious defense to premises liability is where the dangerous conditions feature some "special aspects" that "make the risk of harm unreasonable" notwithstanding the conditions' openness and obviousness. *Bertrand*, *supra* at 614, 618. In general, such "special aspects" must be "effectively unavoidable" or must "impose an

unreasonably high risk of severe harm." *Lugo, supra* at 518. An open and obvious accumulation of snow and ice does not, without more, feature any "special aspects." *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 332-333; 683 NW2d 573 (2004). Plaintiff contends that the trial court erred in finding the conditions effectively avoidable because he could merely have walked across defendant's flowerbed. While we agree that it is highly unlikely that any reasonable person, let alone a commercial invitee, would perceive any host's flowerbed to be a viable way of entering the host's home, the fact that plaintiff slipped on a patch of slush indicates that he could have walked around it without venturing into the flowerbed. Furthermore, slipping and falling a few feet to the ground – which was not even covered in concrete – does not present a high risk of severe harm. See, e.g., *Lugo, supra* at 518-520; *Corey v Davenport College of Business* (*On Remand*), 251 Mich App 1, 7; 649 NW2d 392 (2002).

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis