STATE OF MICHIGAN

COURT OF APPEALS

FRANCES KANSKE and JOSEPH KANSKE, Plaintiffs-Appellants, v VICORP RESTAURANTS, INC., d/b/a BAKERS SQUARE, Defendant-Appellee.	UNPUBLISHED November 6, 2007 No. 274963 Macomb Circuit Court LC No. 2006-001548-CK

Before: Zahra, P.J., and White and O'Connell, JJ.

PER CURIAM.

In this slip and fall case, plaintiffs[1] appeal as of right from the trial court order granting summary disposition to defendant under MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of a slip and fall accident that occurred at a Bakers Square restaurant operated by defendant. On December 4, 2005, plaintiffs went to the restaurant to meet their son for lunch. Plaintiffs parked in a handicapped parking space behind the restaurant. The weather was cold and it had recently snowed. Although the parking lot was relatively clear of ice and snow, plaintiff walked to the front of her vehicle, and then turned and walked along the uncleared edge of the parking lot between the back wall of the building and the front of the parked cars. Plaintiff slipped and fell, fracturing the femur in her left leg.

Plaintiffs filed this lawsuit, alleging negligence and loss of consortium. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that snow and ice are an open and obvious condition in Michigan and that plaintiffs could not establish a prima facie negligence case. The trial court granted defendant's motion on the ground that there were no "special aspects" to remove this case from the open and obvious doctrine.

[1] Because Joseph Kanske's claim for loss of consortium is derivative to Frances Kanske's claim, references to "plaintiff" in the singular throughout this opinion will be to Frances Kanske only.

We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Maiden*, *supra* at 119-121.

A landowner has a duty to exercise reasonable care to protect an invitee from unreasonable risks of harm caused by dangerous conditions on the land, but they are not required to protect invitees from "open and obvious dangers" unless "special aspects" exist that render an open and obvious danger unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517; 629 NW2d 384 (2001). Generally, the danger presented by an accumulation of ice or snow is open and obvious. *Teufel v Watkins*, 267 Mich App 425, 428; 705 NW2d 164 (2005).

Here, there is no question that plaintiff slipped and fell on snow and ice in December and that both plaintiffs were aware that it had been snowing. Therefore, upon casual inspection, a reasonable person would be able to see that the snow-covered path taken by plaintiff could be slippery. Nevertheless, plaintiffs argue that there were special aspects that remove this case from the open and obvious doctrine. We disagree. Special aspects exist when the danger, although open and obvious, is effectively unavoidable or imposes a uniquely high likelihood of harm or severity of harm. *Lugo*, *supra* at 518-519. "It is the aggregate of factors that the trial court must analyze to determine if there are special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided." *O'Donnell v Garasic*, 259 Mich App 569, 578; 676 NW2d 213 (2003).

As an initial matter, plaintiffs have failed to demonstrate that the path was unavoidable. The deposition testimony of several witnesses indicated that the parking lot and sidewalks had been plowed or shoveled, or at least had substantially less snow than the route into the restaurant taken by plaintiff. Furthermore, plaintiffs did not show that the snow-covered path posed an unreasonably high risk of severe injury. Although the snowy path posed some risk of injury, it was only the risk that someone could fall down—the same type of risk that the Court in *Lugo* classified as bearing "little risk of severe harm." *Lugo*, *supra* at 520. The Court went on to explain, "Unlike falling an extended distance, it cannot be expected that a typical person tripping on a pothole and falling to the ground would suffer severe injury." *Id.*

However, plaintiff emphasizes that the risk of severe harm was greater here because handicapped individuals like her were exposed to it. We disagree. The critical inquiry is whether there was something unusual about the path itself, which because of its "character, location, or surrounding conditions . . . gives rise to an unreasonable risk of harm." *O'Donnell*, *supra*. We are not persuaded that the location of the uncleared walkway near handicapped parking spaces substantially increased the likelihood that severe harm would occur to patrons who decided to use the snowy area as a walkway. Adopting plaintiff's argument would require us, contrary to *Lugo*, *supra* at 518 n 2, to lose our focus on the state of the premises and focus instead on the effect the condition had on this specific plaintiff. The record reflects that plaintiff could have avoided the snowy walkway by traversing the relatively clear portion of parking lot behind the vehicles that led to a shoveled and salted sidewalk. Therefore, plaintiffs have failed to demonstrate either an unavoidable danger or a danger that carried with it an unreasonable risk of severe harm.

The snow-covered pathway was an open and obvious danger possessing no special aspects. Therefore, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O'Connell