

STATE OF MICHIGAN
COURT OF APPEALS

JOANN JENNINGS,

Plaintiff-Appellee,

v

NEW ATTITUDES BEAUTY SALON, INC.,

Defendant-Appellant.

UNPUBLISHED
February 28, 2008

No. 274303
Genesee Circuit Court
LC No. 05-082462-NO

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

OWENS, J. (*dissenting*)

I respectfully dissent from the majority's conclusion that the trial court erred when it denied defendant's motion for summary disposition. I believe that a question of fact exists regarding whether the icy conditions in the parking lot at the time plaintiff left the salon were open and obvious.

Plaintiff claims that she traversed the parking lot of the salon, located on the northwest side of Flint, several times earlier in the day and did not notice ice in the parking lot. However, the temperature dropped in the hours immediately preceding her fall and it was dark when she left the salon. Further, although the city of Flint recorded an official temperature of 35 degrees Fahrenheit soon after plaintiff's fall, this temperature was recorded at Bishop International Airport, located approximately ten miles south of the salon. I believe that a question of fact exists regarding whether the temperature and weather conditions in the parking lot were such that water from melting snow piles adjacent to the parking spaces ran onto the parking lot and then began forming black ice as the temperature dropped. Consequently, given that plaintiff did not notice ice or moisture on the parking lot earlier in the day and approached her vehicle in the dark, I believe that a question of fact exists regarding whether the formation of ice near the driver's side door of plaintiff's car was open and obvious.

Further, I believe a question of fact exists regarding whether plaintiff could have avoided stepping on the black ice in order to enter her car. The majority notes that plaintiff could have entered her vehicle through the passenger-side door. However, plaintiff was wearing a denim skirt and would have had to climb over a central console in her vehicle in order to reach the driver's seat from the passenger side of the vehicle. I believe a question of fact exists regarding whether plaintiff could have done this, given that little information was provided in the lower court record regarding her age, weight, height, physical disabilities, and other factors that could

have affected her ability to climb over the central console of her car. For these reasons, I would affirm the trial court's order denying defendant's motion for summary disposition.

/s/ Donald S. Owens