STATE OF MICHIGAN

COURT OF APPEALS

CELIA GAJESKI, Plaintiff-Appellant,	UNPUBLISHED July 31, 2012
v	No. 304717 Mason Circuit Court
JAMES C. GWILLIM ENTERPRISES, INC, Defendant-Appellee.	LC No. 10-000367-NO

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's grant of summary disposition under MCR 2.116(C)(10) on her premises liability claim arising from her fall on steps or a multi-level ledge on defendant's premises. We affirm.

A grant of summary disposition is reviewed de novo. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). All evidence is viewed in a "light most favorable to the nonmoving party." *Quality Products and Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003).

The trial court agreed with defendant that any defect or danger was open and obvious, thus precluding plaintiff's recovery. A premises possessor generally does not have a duty to remove or warn of dangers that are open and obvious. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). A danger is open and obvious when an average user of ordinary intelligence would discover the danger upon casual inspection. *Novotney v Burger King Corp*, 198 Mich App 470, 473-475; 499 NW2d 379 (1993).

Plaintiff fell while she was about to enter defendant's store, which necessitated her to negotiate two steps. She tripped and fell while ascending the second and top step. The alleged defect is a difference in riser height between the two steps. The first step had a rise of 6 inches, while the second step (the one upon which plaintiff tripped) had a rise of 8 inches. The fall occurred in the light of midday, and that there was no water or ice on the steps. Plaintiff's expert testified that "a person will not properly anticipate this increased riser height and fail to raise their foot high enough to clear the tread of the step."

This case is similar to the situation in *Novotney*. In *Novotney*, the plaintiff fell when she stepped from a sidewalk onto a handicap ramp which was inclined. She testified that she did not

expect the incline and had anticipated stepping onto a level, flat surface. *Novotney*, 198 Mich App at 472. This Court concluded that the open and obvious danger doctrine applied as the incline was noticeable to a casual observer, without regard to whether the plaintiff actually noticed it or whether it could have been made more noticeable. *Id.* at 475. In other words, it was not relevant what the plaintiff in *Novotney* anticipated in stepping on a flat surface on the sidewalk, but what she could have discovered herself (that it was inclined to create a handicap ramp). Similarly in the case at bar, it is not relevant whether plaintiff would have anticipated a difference in the rise of the two steps, but whether the difference was noticeable upon casual inspection.

Plaintiff points to no evidence, beyond what the expert opined what a person would have anticipated, to establish that the difference in riser height could not have been discovered upon casual inspection and successfully negotiated. Accordingly, the trial court properly granted summary disposition in favor of defendant.

Affirmed. Defendant may tax costs.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Donald S. Owens