STATE OF MICHIGAN

COURT OF APPEALS

CHARLOTTE GRANDBERRY-LOVETTE, Plaintiff-Appellant,	FOR PUBLICATION January 2, 2014
v	No. 311668 Macomb Circuit Court
MARK GARASCIA, Defendant-Appellee.	LC No. 2011-003847-NO

Before: JANSEN, P.J., and O'CONNELL and M. J. KELLY, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. The majority invents a novel duty that requires premises possessors to predict when and whether Michigan weather might cause decorative bricks to loosen. I am unconvinced that Michigan law requires any premises possessor be meteorologically clairvoyant about masonry. In my view, the majority opinion creates a new doctrine of anticipatory notice, which has never been recognized in Michigan. I decline to apply this new doctrine. Instead, I accept the trial court's application of the well-recognized doctrine of constructive notice, and I would affirm the grant of summary disposition in favor of defendant.

Plaintiff argues, and the majority holds, that there is a genuine issue of material fact regarding whether defendant had notice of any wobbling in the decorative brick on the porch step. I find no factual issue. Premises possessors may be liable for injuries that result from a dangerous condition on their premises if they have actual notice of the condition, or if the condition is such that the law ascribes constructive notice to them. See generally *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). A premises possessor has constructive notice of a dangerous condition if the condition is "of such a character or has existed a sufficient length of time that he should have had knowledge of it." *Id.* (quotation omitted).[1]

[1] Plaintiff asserts that a question of fact existed as to whether defendant had actual notice of the defect in the step because he previously repaired another section of the step and, therefore, knew of the bricks' propensity to break free from the concrete step. However, general knowledge that bricks may become loose does not constitute actual notice of the condition that caused plaintiff's

The record contains nothing to create a factual issue about constructive notice. Although the record indicates that defendant had repaired the steps once, there is no indication that the bricks routinely became loose. Plaintiff argues that because defendant once repaired part of the steps, defendant forever had constructive notice that the entire step could be defective. However, plaintiff presented no evidence to establish that defendant was aware of a defect in any part of the step at the time of plaintiff's fall. I cannot find that defendant's prior repair of the step gave him constructive notice that a future defect might occur. Nor can I find that the prior repair created a continual duty to scrutinize that step.[2] Thus, I conclude that no genuine issue of material fact existed as to whether defendant had constructive notice of the alleged defect. Consequently, summary disposition for defendant was proper under MCR 2.116(C)(10), and I would affirm the trial court's decision.

/s/ Peter D. O'Connell

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fall. See generally *Altairi v Alhaj*, 235 Mich App 626, 640; 599 NW2d 537 (1999). Thus, the evidence, even when viewed in the light most favorable to plaintiff, did not create a genuine issue of material fact as to whether defendant had actual notice of the alleged defect in the steps.

[2] The majority's new duty requires defendant to prove a negative, i.e., that an inspection by a reasonably prudent premises possessor "would *not* have revealed the dangerous condition at issue." (Slip op p 8, emphasis added). If, as the majority seems to suggest, a wobbly brick is not apparent from a visual inspection, I cannot see how premises possessors could possibly prove that they fulfilled the new duty.