# STATE OF MICHIGAN

# COURT OF APPEALS

MICHELLE DASH,

Plaintiff-Appellant,

v

MAURICE JENKINS,

Defendant-Appellee.

UNPUBLISHED
December 10, 1996

No. 183989
LC No. 94-419942-NO

Before: Holbrook, Jr., P.J., and White and S.J. Latreille,* JJ.

PER CURIAM.

Plaintiff Michelle Dash appeals as of right from the trial court's grant of summary disposition in favor of defendant in this premises liability case. We reverse and remand.

On March 17, 1993, plaintiff was injured when she tripped, slipped, and fell as she walked down the walkway outside her apartment. Plaintiff brought suit against defendant, the owner of the apartment, seeking damages for injuries allegedly sustained in the fall. Plaintiff testified at deposition that her fall occurred when she slipped and fell due to a large crack in the walkway. She claimed that the crack had been there since she first moved into the apartment six months prior to the accident, although it was quite a bit smaller when she moved in. Plaintiff claimed that she had notified defendant about the crack before her accident. She conceded that before the accident happened, she had always avoided the crack by walking around or over it. However, plaintiff testified that on the day of the accident, the crack was partially filled with ice and covered by a light misting of snow, and embankments of snow were on either side of the walkway. She claimed that, had defendant cleared the snow off of the walkway and salted it, she would have been able to see the crack. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10), contending that he did not owe any duty to plaintiff because the danger presented by the crack was open and obvious. The trial court agreed with defendant, finding that the snow did not obscure the open and obvious defect. We reverse.

*Circuit judge, sitting on the Court of Appeals by assignment.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual basis underlying a claim. *Auto-Owners Insurance Company v Johnson*, 209 Mich App 58, 63; 530 NW2d 120 (1995). We review a trial court's grant of summary disposition de novo, "giving the benefit of doubt to the nonmovant, whether the movant would have been entitled to judgment, as a matter of law." *Lytle v Malady*, 209 Mich App 179, 183; 530 NW2d 135 (1995), lv gtd 451 Mich 920 (1996). Where defects existing on a land owner's premises are known to his 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 the land owner should anticipate the harm despite the invitee's knowledge of it. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 90-91; 485 NW2d 676 (1992). However, even if the invitee knows of the danger, provided the proofs present a question of fact with regard to whether the risk of harm was unreasonable, the issue despite the obviousness or the invitee's knowledge of the danger, is a question for the jury to decide. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611, 617; 537 NW2d 185 (1995). Giving the benefit of the reasonable doubt to plaintiff, the proofs offered by the parties presented a question of fact whether the ice and snow that covered the crack in the walkway rendered the risk of harm from that crack unreasonable, and whether defendant should have anticipated such harm to plaintiff despite plaintiff's knowledge of the crack in the walkway. Therefore, summary disposition in favor of defendant was inappropriate.

The trial court's grant of summary disposition in favor of defendant is reversed and the case is remanded to the trial court for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Stanley J. Latreille