STATE OF MICHIGAN

COURT OF APPEALS

FAQUZI HAIDAR, a/k/a FRED HAIDAR, and SIHAN HAIDAR,

Plaintiffs-Appellants,

v

MEHRAN MELKONIAN and BONITA MELKONIAN,

Defendants-Appellees.

UNPUBLISHED
December 17, 1996

No. 189802
LC No. 94-418884-NI

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) in this premises liability case. We affirm.

Plaintiffs assert that despite their knowledge from the time of its construction of an eight-inch-high curb dividing plaintiffs' and defendants' driveways, by defendants' predecessor constructed several years ago to stop run-off water from flowing between these adjacent properties, defendants were liable for the injuries Plaintiff Fred Haidar suffered when he stepped out of the passenger side of his vehicle onto this curb and fell, fracturing his right foot. Plaintiffs' complaint alleged causes of action for negligence, nuisance, and loss of consortium all based upon the existence of the curb and the hazard it created. According to plaintiffs, the curb was not an open and obvious danger because plaintiff's fall occurred at night and plaintiff could not see the curb, even though he knew that the curb existed. Alternatively, plaintiffs argue that the curb was sufficiently unusual to impose upon defendants a duty to protect plaintiffs from an unreasonable risk of harm of falling over the curb. We disagree.

When reviewing de novo the trial court's decision regarding a motion under MCR 2.116(C)(8), we accept all of plaintiffs' factual allegations as true, as well as any reasonable inferences drawn from them, and determine whether plaintiffs' claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995).

Defendants' duty to plaintiffs, who were presumably social guests and, therefore, licensees, *Pigeon v Radloff*, 215 Mich App 438, 41; 546 NW2d 655 (1996), is limited by the principle that a premises owner owes no duty to warn an adult licensee of an open and obvious danger. *Id. at* 442, citing *DeBoard v Fairwood Villas Condominium Ass'n*, 193 Mich App 240, 241-242; 483 NW2d 422 (1992). Further, as this Court observed in *Pigeon, supra* at 441, citing 2 Restatement of Torts 2d, §342, p 210:

> A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,
>
> (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licenses, and should expect that they will not discover or realize the danger, and
>
> (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, *and*
>
> (c) *the licensees do not know or have reason to know of the condition and the risk involved* [Emphasis added.]

Plaintiffs admitted that they knew about the curb's existence for several years but plaintiff Fred Haidar could not see the curb at night, so it became a hidden or unreasonable danger. Plaintiffs fail, however, to cite any authority for the proposition that the absence of daylight can transform a known, admittedly open and obvious danger into a "hidden danger" that a "licensee does not know [about] or has no reason to know of the dangers involved." *DeBoard, supra* at 242, citing *Wymer v Holmes*, 429 Mich 66, 71, n 1; 412 NW2d 213 (1987). We will not search for authority to support a party's position on appeal. *Winiemko v Valenti*, 203 Mich App 411, 419; 513 NW2d 181 (1994).

Further, although plaintiffs assert that the curb was "unusual" so it was for the jury to decide whether the curb was unreasonably dangerous, citing *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 616-617; 537 NW2d 185 (1995), we find that *Bertrand* applies only to invitees, not licensees such as plaintiffs.[1] Absent case law support for the proposition that unusual but open and obvious curbs impose upon their owners a duty to warn passers-by of the curb's existence, regardless of the time of day, we find that plaintiffs have failed to state a claim upon which relief could be granted for negligence, i.e., plaintiffs' claims are so clearly unenforceable as a matter of law that no factual development could justify recovery. *Eason, supra.* Because plaintiffs do not argue the merits of their nuisance and loss of consortium claims on appeal, we do not address them on appeal.

Affirmed. Costs to defendants per MCR 7.219(a) and, pursuant to MCR 7.216(C)(1)(a), we assess damages in favor of defendants to be determined by the trial court on remand. We retain no jurisdiction.

/s/Barbara B. MacKenzie
/s/ Myron H. Wahls
/s/ Jane E. Markey

[1] Although the rule of law set forth in *Bertrand* is applicable only to invitees, we nevertheless agree with the wisdom of our Supreme Court's observations in *Bertrand*, *supra*, at 616-617, as follows:

> In summary, because steps are the type of everyday occurrence that people encounter, under most circumstances, a reasonably prudent person will look where he is going, will observe the steps, and will take appropriate care for his own safety. Under ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary steps "foolproof." Therefore, the risk of harm is not unreasonable.