STATE OF MICHIGAN

COURT OF APPEALS

BRENDA LAFOND and RALPH LAFOND,

Plaintiffs-Appellants,

v

CONSOLIDATED STORES CORPORATION, an Ohio corporation, d/b/a/ BIG LOTS, BELDEN ASPHALT PAVING COMPANY, a Michigan corporation, and ABRAMS PROPERTIES, INC., a Georgia corporation,

Defendants-Appellees.

UNPUBLISHED
March 3, 1998

No. 203900
Jackson Circuit Court
LC No. 96-077306 NO

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

In this personal injury lawsuit, plaintiff Brenda Lafond[1] and her husband appeal as of right from the order of the circuit court granting defendants' motion for summary disposition. We affirm.

Plaintiff's claim stems from injuries suffered by plaintiff when she slipped off a ramp in the parking lot of a Big Lots store. The ramp connected the parking lot to the sidewalk in front of the store. Apparently, plaintiff fell when she lost her footing at the side edge of the ramp (where the ramp met the sidewalk). The ramp in question was a temporary structure of the same material and color as the parking lot, sloping more sharply on one side than the other, and off-center with respect to the doors leading into the store. Nothing obstructed plaintiff's view of the ramp, although plaintiff is nearsighted and was not wearing her corrective lenses at the time of the fall.

Plaintiff alleged that defendants breached a duty to warn of a dangerous condition, as well as a duty to inspect and maintain the ramp for purposes of keeping it safe for invitees. The circuit court granted defendants' MCR 2.116(C)(10) motion for summary disposition, concluding as a matter of law that the testimony and photographs in the record did not present a question for the jury regarding whether a dangerous or defective condition existed. Plaintiff now argues on appeal that the circuit court

erred in finding that the ramp was not defective, and that the ramp as plaintiff encountered it was an open and obvious condition.

This Court reviews de novo an order granting summary disposition under MCR 2.116(C)(10). *Farm Bureau Mutual Ins Co v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991). We examine all relevant documentary evidence in the light most favorable to the plaintiff to determine whether a genuine issue of material fact exists on which reasonable minds could differ. *Id.* "Summary judgment should only be granted when the plaintiff's claim is so clearly unenforceable as a matter of law that no factual development can possibly justify a right to recovery." *Young v Michigan Mutual Ins Co*, 139 Mich App 600, 603; 362 NW2d 844 (1984).

Plaintiff's first argument on appeal is that the trial court erred in finding that the ramp in question was not defective. We disagree. That a premises owner may be liable to an invitee for injuries cause by dangerously defective conditions is well established. See *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995) (failure to remedy a dangerous condition may constitute a breach of the duty to keep the premises reasonably safe). However, plaintiff cites no authority for the proposition that a ramp (or any similar structure) is defective if it is temporary, if it is placed off-center with respect to doors to which it leads, or if it slopes more sharply on one side than on another. The evidence in the record suggests that these characteristics constitute mere aesthetic imperfections, not defects creating a dangerous condition. Therefore, we agree with the circuit court's finding that mere imperfections do not render the ramp a dangerously defective condition.

Plaintiff next argues that the trial court erred in finding that the condition was open and obvious. A business owner owes a duty to its customers to maintain its premises in a reasonably safe condition and to exercise ordinary care in keeping the premises safe. *Bertrand, supra*. The duty to exercise ordinary care does not extend to conditions or dangers so open and obvious that invitees can reasonably be expected them. *Id.* Similarly, an invitor is not required to warn of an open and obvious condition. *Riddle v McLouth Steel Products*, 440 Mich 85, 90-95; 485 NW2d 676 (1992). As a general rule, steps and differing floor levels are considered open and obvious. *Bertrand, supra* at 614. This Court has also concluded that an inclined handicap access ramp is an "open and obvious" condition. *Novotney v Burger King (On Remand)*, 198 Mich App 470, 475; 449 NW2d 379 (1993).

In the present case, plaintiff has brought forth no evidence suggesting that the inclined ramp was "not discoverable upon casual inspection." *Novotney, supra*. As the trial court noted, the issue is not whether the ramp could have been *more* obvious or noticeable, or whether it could have been painted a contrasting color, but whether an average user with ordinary intelligence would have been able to discover the danger upon casual inspection. See also *Novotney, supra*. Although plaintiff claims that the condition was not readily discernible, we believe the record suggests otherwise. The incident occurred at approximately 5:00 p.m. in January. The conditions encountered by plaintiff (that the ramp was the same color as the parking lot, the ramp's rise to the level of the sidewalk, and its properties at the edge where plaintiff claims to have fallen) should have been obvious to a casual observer.[2] Because plaintiff fails to assert that any specific feature of the ramp was not in plain view when plaintiff fell, and

because the evidence in the record does not support such a finding, we affirm the circuit court's determination that the ramp at issue constituted an open and obvious condition.

Plaintiff next argues that even if the ramp was not defective, and even if the ramp did constitute an open and obvious condition, summary disposition was nonetheless inappropriate because there remained a question of fact as to whether something unusual about the character, location, or surrounding conditions of the ramp rendered the ramp unreasonably dangerous. Once again, we disagree. While it is true that an unusual character, location, or surrounding condition may render an otherwise safe structure unreasonably dangerous, plaintiff's cursory argument fails to allege how the circumstances of the ramp in question caused the ramp to be unreasonably dangerous to invitees. Because plaintiff fails to apply the facts of the instant case to the applicable legal principle, and because our review of the record indicates no unusual conditions which rendered the ramp in question unreasonably dangerous, we will not disturb the judgment below.

Affirmed.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Michael R. Smolenski

[1] Plaintiff's name is spelled "LaFond" in some documents in the record. Since Mr. Lafond's claim is derivative of his wife's, we use "plaintiff" in this opinion to refer to Mrs. Lafond only.

[2] That ramps generally have slopes rather than vertical edges is presumed to be part of an ordinary user's expectations.