STATE OF MICHIGAN

COURT OF APPEALS

THOMAS CRAMER,

Plaintiff-Appellant,

v

SOUTHLAND II APARTMENTS and SELIGMAN & ASSOCIATES, INC.,

Defendants-Appellees.

UNPUBLISHED
June 23, 1998

No. 198077
Wayne Circuit Court
LC No. 95-521139-NO

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff visited a friend, Ronald Gering, at the Southland II Apartments, which are owned by Seligman & Associates, Inc. As he left Gering's apartment, plaintiff walked across the porch, down the steps and across the first section of the adjoining sidewalk. Plaintiff had made his way across approximately one-third of the second section of the sidewalk when he heard Gering call to him. Plaintiff stopped, turned and took a step back toward the apartment. Plaintiff's right foot caught the edge of the first sidewalk section, causing his right ankle to twist. Plaintiff fell off the sidewalk onto an adjacent area of dirt and grass.

Plaintiff filed suit against defendants, alleging that the sidewalk was defective because of an uneven gap between the first and second sections of the sidewalk and because there was a significant drop-off next to the sidewalk caused by erosion. In granting defendants' motion for summary disposition, the trial court ruled "that the height disparity is diminious [sic], if at all, and certainly doesn't rise to a level of a defect, let alone an unreasonable defect." Plaintiff appeals, arguing that summary disposition was inappropriate because a genuine issue of material fact exists concerning whether the uneven gap between the sidewalk sections and the drop-off next to the sidewalk created an unreasonable risk of harm. We disagree.

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). In determining whether summary disposition was properly granted under MCR 2.116(C)(10), we examine the entire record, including pleadings, affidavits, depositions, admissions, and other documentary evidence, and construe all reasonable inferences arising from the evidence in a light most favorable to the nonmoving party. *Henderson v State Farm Fire & Casualty Co*, 225 Mich App 703, 708; 572 NW2d 216 (1997). The motion may be granted when, except with regard to the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

As a social guest of one of defendants' tenants, defendants owed to plaintiff those duties owed to an invitee with regard to the common areas of the apartments. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540-542; 506 NW2d 890 (1993). A premises owner has a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the premises that the owner knows or should know the invitees will not discover, realize, or protect themselves against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

However, where a condition is open and obvious, the scope of the premises owner's duty may be limited. *Id.* at 610. If the condition creates a risk of harm *only* because the invitee does not discover the condition or realize its danger, then the open and obvious doctrine will cut off liability if the invitee should have discovered the condition and realized its danger. *Id.* at 611. On the other hand, if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions. *Id.* Whether a danger is open and obvious depends on whether an average person of ordinary intelligence could reasonably be expected to discover the danger and the risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

Here, plaintiff testified in his deposition that he had visited Gering's apartment on several occasions and had taken the same path to the apartment. The photographs supplied by plaintiff clearly reveal that the condition of the sidewalk and abutting lawn was discoverable upon a causal inspection. Moreover, there is no evidence that the risk of harm remained unreasonable despite its obviousness. Rather, this case simply involves a plaintiff who did not watch where he was walking and consequently became injured. There being no genuine issue of material fact for the jury, the trial court properly granted summary disposition to defendants.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Martin M. Doctoroff