# STATE OF MICHIGAN

# COURT OF APPEALS

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ELIZABETH EISENHARDT,

Plaintiff-Appellant,

v

TRUMAN CRAFT and JUDITH CRAFT d/b/a CRAFT'S MARKET,

Defendants-Appellees.

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UNPUBLISHED
June 26, 1998

No. 198806
Macomb Circuit Court
LC No. 96-003145-NO

Before: Sawyer, 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 pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm.

Plaintiff alleges that, after being dropped off near the entrance of defendants' store, she tripped and fell over the edge of the curb, which rounds down to provide an access ramp for the handicapped. The trial court ruled that defendants owed plaintiff no duty of care because the purported defect was open and obvious and did not pose an unreasonable risk of harm.

On appeal, we review a trial court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1996). Giving the benefit of the doubt to plaintiff, we must determine whether a record might be developed that could leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995).

A business invitor must exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition that the landowner knows or should know invitees will not discover or protect themselves against. *Bertrand*, *supra* at 609. However, an invitor's duty of care is limited where a potentially dangerous condition is open and obvious. *Id.* at 610. A danger is open and obvious if an average user of ordinary intelligence could have discovered the danger and the risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). The invitor has no duty to warn of open and obvious dangers unless the

invitor should anticipate the harm to the invitee despite the

invitee's knowledge of the defect. *Riddle v McLouth Steel Products*, 440 Mich 85, 96; 485 NW2d 676 (1992). Even if a condition is open and obvious, the invitor may nevertheless be required to exercise reasonable care to protect the invitee from danger, if the circumstances surrounding the area make the situation unreasonably dangerous. *Singerman v Municipal Service Bureau Inc*, 455 Mich 135, 140; 565 NW2d 383 (1997); *Bertrand*, *supra* at 624.

In the present case, plaintiff testified at her deposition that there was nothing about the curb that was different than a normal curb and that it was not broken in any way. Her testimony revealed that the curb was not defective and that she simply tripped because she was not watching her step. See *Maurer v Oakland Co Parks and Recreational Dep't (After Remand)*, 449 Mich 606, 621; 537 NW2d 185 (1995) (unmarked cement step was open and obvious where the plaintiff failed to establish anything unusual about the step and where the plaintiff's only asserted basis for finding it dangerous was because she did not see it). The fact that the curb was not painted in contrasting color is insufficient to establish a question fact. *Novotney*, *supra* at 475. Accordingly, the trial court properly granted summary disposition in favor of defendants.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Martin M. Doctoroff