STATE OF MICHIGAN

COURT OF APPEALS

MARK TAYLOR,

Plaintiff-Appellant,

and

CHRISTINE TAYLOR,

Plaintiff,

v

LELAND HOUSE, LIMITED PARTNERSHIP CORP., d/b/a CITY CLUB,

Defendant-Appellee.

UNPUBLISHED
September 7, 1999

No. 205807
Wayne Circuit Court
LC No. 97-704312 NO

Before: Gribbs, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Plaintiff[1] appeals as of right from the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant in this premises liability action. We affirm.[2]

This Court reviews de novo an order granting summary disposition. *Weisman v US Blades, Inc*, 217 Mich App 565, 566; 552 NW2d 484 (1996). Giving the benefit of doubt to the nonmovant, this Court must independently determine whether the movant would have been entitled to judgment as a matter of law. *Id* at 567.

According to plaintiff, there were several holes in the walls of defendant's establishment. Plaintiff, who had been drinking, crawled into one of these holes and, using pipes or brackets positioned between the walls, climbed to the top of the wall and peered down at the dance floor from the ceiling. Plaintiff sustained serious injuries when he fell approximately thirty feet from the top of the wall onto the dance floor.

First, plaintiff argues that the trial court prematurely granted summary disposition because the discovery period had not yet ended. We disagree. Generally, summary disposition is premature if

granted before discovery on a disputed issue is complete. Summary disposition is not premature, however, if the discovery does not stand a fair chance of uncovering factual support for opposing the motion for summary disposition. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996). In this case, in light of our finding that defendant owed plaintiff no duty, summary disposition was not premature.

Plaintiff also argues that the trial court erred in determining that defendant, as a matter of law, owed no duty to protect him from climbing into the hole in the wall and up to the ceiling. There is no merit to this claim. Even assuming arguendo that plaintiff was not trespassing when he climbed into the hole and climbed up between the walls, both the hole and the danger involved in climbing up thirty feet were so open and obvious that defendant did not owe a duty to protect even its invitees. *Millikin v Walton Manor,* 234 Mich App 490; ___ NW2d ___ (1999). Further, there is nothing to suggest that the holes in the wall presented an unreasonable risk of harm notwithstanding their open and obvious nature. *Id.* The trial court properly granted summary disposition in this case.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael R. Smolenski
/s/ Hilda R. Gage

[1] Plaintiff, Mark Taylor, married Christine Taylor subsequent to sustaining his injuries. Following the marriage, plaintiffs filed a first-amended complaint to assert a claim for loss of consortium. The trial court dismissed this claim when it granted defendant's motion for summary disposition, and plaintiffs do not appeal this dismissal. Therefore, references to plaintiff throughout this opinion are to Mark Taylor, only.

[2] The trial court granted defendant summary disposition on plaintiffs' loss of consortium, negligence and nuisance claims. Plaintiff does not address the propriety of the court's dismissal of the consortium or nuisance claims, and we therefore consider plaintiff to have waived appeal of these dismissals. *Sokolek v General Motors Corp (On Remand),* 206 Mich App 31, 36; 520 NW2d 668 (1994), aff'd 450 Mich 133 (1995).