STATE OF MICHIGAN

COURT OF APPEALS

VERNA WOLF,

Plaintiff-Appellant,

v

SUZANNE FARANSO,

Defendant-Appellee.

UNPUBLISHED
November 23, 1999

No. 213951
Oakland Circuit Court
LC No. 97-001623 NO

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. It is unclear whether the court granted summary disposition pursuant to MCR 2.116(C)(8) or (10). Nevertheless, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff went to defendant's home to receive a manicure. Plaintiff paid a fee for the service. As she was leaving defendant's home plaintiff tripped on the sidewalk and fell to the ground, sustaining injuries. Plaintiff determined that she must have tripped on a raised portion of the sidewalk.

Plaintiff's complaint alleged that defendant negligently failed to maintain the premises in a safe condition, and failed to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that she had no duty to warn plaintiff of the condition of the sidewalk because the condition was open and obvious. The trial court granted plaintiff's motion, finding that the condition of the sidewalk was open and obvious, and that the sidewalk had no special or unusual characteristics which would render the open and obvious doctrine inapplicable.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim. It must be decided on the pleadings alone, with all well-pled facts and reasonable inferences therefrom taken as true. The motion should be denied unless the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Formall v Community National*

Bank, 166 Mich App 772, 777; 421 NW2d 289 (1988). In reviewing the grant of a motion for summary disposition under MCR 2.116(C)(10), this Court must review the record evidence, and all reasonable inferences drawn therefrom, and decide whether a genuine issue of material fact exists. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. A possessor of land may be held liable for injuries resulting from negligent maintenance of the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger with casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If the risk of harm from a dangerous condition remains unreasonable, in spite of the fact that it is open and obvious or that the invitee has knowledge of it, the possessor of land must take reasonable care. If there is something unusual about steps or varying floor levels due to their character, their location, or other conditions, the duty of the possessor of land to take reasonable care remains intact. *Bertrand, supra* at 611, 617.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree. The photographs of the sidewalk clearly show the difference in height between the slabs of the sidewalk on defendant's premises. Grass is growing in a portion of the division between the slabs. The presence of the grass draws attention to the division between the slabs. The fact that plaintiff claimed that she did not know of the alleged dangerous condition is irrelevant. *Novotney*, *supra* at 476-477. Plaintiff did not come forward with sufficient evidence to create a question of fact as to whether an ordinary user, upon casual inspection, could not have discovered the height differential between the sidewalk slabs. Furthermore, plaintiff's proofs did not demonstrate that there was something unusual about the sidewalk due to its character or location. The grant of summary disposition was proper.

Affirmed.

/s/ William C. Whitbeck
/s/ Roman S. Gribbs
/s/ Helene N. White