STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA J. PERRY,

Plaintiff-Appellant,

v

ROBERT W. LONG,

Defendant-Appellee.

UNPUBLISHED
November 30, 1999

No. 215021
Midland Circuit Court
LC No. 97-007360 NO

Before: Jansen, P.J., and Hoekstra and J. R. Cooper*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this slip and fall case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, her daughter, and defendant were out together on the evening of December 15, 1996. They stopped at defendant's home, and stayed for 15 to 20 minutes. The weather conditions were described as misting snow, but the sidewalk to defendant's house was clear and well-lit when they arrived. When leaving the house, plaintiff slipped on the wooden deck, and broke her femur.

Plaintiff brought this action, alleging that the deck was extraordinarily slippery, and defendant breached his duty to either take remedial action or to warn her of the condition. Defendant moved for summary disposition, asserting that he had no special knowledge of any dangerous condition of the deck. The court granted summary disposition, finding that plaintiff failed to present evidence that defendant's deck presented an unusual risk.

In *Preston v Sleziak*, 383 Mich 442, 453; 175 NW2d 759 (1970), the Supreme Court adopted § 342 of the Second Restatement of Torts to express the duty owed by a property owner to a licensee:

* Circuit judge, sitting on the Court of Appeals by assignment.

"A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,

(a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and

(b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and

(c) the licensees do not know or have reason to know of the condition and the risk involved." [*Id.*, quoting 2 Restatement Torts, 2d, § 342, p 210; *D'Ambrosio v McCready*, 225 Mich App 90, 93; 570 NW2d 797 (1997)].

Plaintiff failed to present the required evidence to raise a genuine issue of fact as to defendant's knowledge of the dangerous condition of his deck. Where plaintiff had walked up the same steps 15 to 20 minutes prior to her fall, she was equally aware of any obvious condition as defendant, and defendant had no duty to warn.[1]

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper

[1] This Court recently held that the natural accumulation doctrine is not applicable to private possessors of land. *Altairi v Alhaj*, 235 Mich App 626, 629, 638; 599 NW2d 537 (1999). The trial court did not rely on this doctrine in granting summary disposition.