STATE OF MICHIGAN

COURT OF APPEALS

MILDRED R. McCLEOD,

Plaintiff-Appellant,

v

SHOPKO STORES, INC.,

Defendant-Appellee.

UNPUBLISHED
May 19, 2000

No. 214736
Delta Circuit Court
LC No. 97-014063 NO

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff allegedly suffered injury when she tripped and fell over a pallet in defendant's Escanaba store. Specifically, plaintiff testified that she was looking at flowers in the lawn and garden section of the store. Flowers were displayed on a row of stacked wooden pallets that were of different heights. Plaintiff tripped over a pallet because she did not see "the corner sticking out." Plaintiff was looking at the flowers at the time of her fall. Defendant moved for summary disposition and argued that the pallet presented an open and obvious condition that plaintiff would have observed if she had paid attention to her surroundings as she walked. The trial court agreed and granted defendant's motion for summary disposition.

Plaintiff argues that genuine issues of material fact exist regarding whether the condition was open and obvious such that it created an unreasonable risk of harm to plaintiff. We disagree. We review summary disposition decisions de novo to determine whether the prevailing party was entitled to judgment as a matter of law. *Hughes v PMG Building, Inc*, 227 Mich App 1, 4; 574 NW2d 691 (1997).[1] If a condition creates a risk of harm only because the invitee did not discover the condition or realize the danger of the condition, the open and obvious doctrine will act to bar liability if the invitee should have discovered or realized the danger of the condition. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 610-611; 537 NW2d 185 (1995). However, if the risk of harm remains unreasonable despite the obviousness or knowledge of the condition, the invitor is required to undertake reasonable precautions under those circumstances. *Id*. To determine whether a condition presents an open and obvious

danger, we must examine whether an average user of ordinary intelligence would have discovered any danger or risk presented upon casual inspection. *Novotney v Burger King (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Review of the pallet reveals that an ordinary user would have discovered the danger upon examination of the area. The condition was open and obvious, and the risk of harm did not remain unreasonable based on the placement of the flowers upon the pallet. In fact, plaintiff admitted that if she had been looking, she would have seen the pallet. However, instead of watching her step, plaintiff admitted that she was looking at the flowers. Public policy dictates that people take reasonable precautions for their own safety, and a reasonably prudent person will observe their steps. *Bertrand, supra* at 616-617. An attractive display of flowers on the pallet does not lessen the degree of care that plaintiff was required to exercise for her own safety. *Boyle v Preketes*, 262 Mich 629, 632-633; 247 NW 763 (1933). Accordingly, the presence of the flowers does not create a question of fact regarding the reasonableness of the open and obvious condition.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell

[1] The trial court did not identify the subsection of MCR 2.116(C) upon which it was relying to grant summary disposition. However, the trial court relied on matters outside the pleadings in granting defendant's motion for summary disposition. Accordingly, we will construe the motion as having been granted pursuant to MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997).