

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH WEBB,

Plaintiff-Appellant,

v

K-MART CORPORATION,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 215647
Wayne Circuit Court
LC No. 97-734801-NO

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff entered defendant's store, stepped over a barrier, and entered an area that had been closed to customers. As she walked in the area, she slipped in a puddle of liquid and fell to the floor, sustaining injuries. Plaintiff filed suit alleging that defendant failed to maintain its premises in a reasonably safe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it had no duty to warn plaintiff of the condition of the floor because the condition was open and obvious. The trial court granted the motion, finding that the condition was open and obvious.

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).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

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 upon 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. *Bertrand, supra*, 611.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. The undisputed evidence showed that plaintiff walked into a barricaded area where a puddle which measured, by plaintiff's own estimation, ten feet by ten feet was located. The fact that plaintiff claims that she did not know of the allegedly dangerous condition is irrelevant. *Novotney, supra*, 477. Plaintiff did not come forward with sufficient evidence to create a question of fact as to whether an average person with ordinary intelligence could have discovered the puddle on the floor upon casual inspection. The grant of summary disposition was proper.

Affirmed.

/s/ Richard Allen Griffin
/s/ Mark J. Cavanagh
/s/ Hilda R. Gage