STATE OF MICHIGAN

COURT OF APPEALS

AGGIE B. JOHNSON, Plaintiff-Appellant,	UNPUBLISHED February 9, 2001
v	No. 214757 Genesee Circuit Court
COURT STREET, INC., Defendant-Appellee.	LC No. 97-057891-NO

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm.

We review de novo a trial court's grant or denial of a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is proper if no genuine issue of material fact exists, thereby entitling the moving party to judgment as a matter of law. *Id.*

A possessor of land has a legal duty to exercise reasonable care to protect invitees[1] from unreasonable risks of harm caused by a dangerous condition of the land that the landowner knows or should know an invitee will not discover, realize, or protect against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-610; 537 NW2d 185 (1995). Liability for an invitee's injuries may result from the failure to warn of a hazardous condition, negligent maintenance of the premises, or defects in the physical structure of a building. *Id*. at 610. Where a condition is open and obvious, the scope of the possessor's duty may be limited, but the "open and obvious" doctrine does not relieve the invitor of his duty to protect the invitee against unreasonably dangerous conditions. *Id*. at 610-611. In other words, if the risk of harm remains unreasonable, then notwithstanding its obviousness or the invitee's knowledge of it, the invitor may be required to undertake reasonable precautions. *Id*. at 611. Whether a danger is open and obvious depends on

[1] The parties do not dispute plaintiff's status as an invitee.

whether an average user of ordinary intelligence would discover the danger on casual inspection. *Weakley v Dearborn Heights*, 240 Mich App 382, 385; 612 NW2d 428 (2000).

Plaintiff admitted in her deposition that she used the steps without incident in the past, and that she was aware of their irregularity and the absence of a handrail. Therefore, the alleged dangerous condition was open and obvious. See, *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). Plaintiff urges us to conclude, however, that a genuine issue of fact existed whether the stairs presented an unreasonable risk of harm. Plaintiff emphasizes that the steps at issue violated the building code, were of varying heights, had an unreasonably dangerous slant, and contained no handrail. We disagree. While the stairs may have caused plaintiff's injury, they were simply that – stairs. We cannot conclude that two steps leading to a porch constituted an unreasonably dangerous condition. Defendant was, therefore, entitled to judgment as a mater of law.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell