

STATE OF MICHIGAN
COURT OF APPEALS

AGGIE B. JOHNSON,

Plaintiff-Appellant,

v

COURT STREET, INC.,

Defendant-Appellee.

UNPUBLISHED

February 9, 2001

No. 214757

Genesee Circuit Court

LC No. 97-057891-NO

Before: Talbot, PJ, and O'Connell and Cooper, JJ.

COOPER, J. (*dissenting*).

I respectfully disagree with the majority's opinion. There is no dispute that the danger was open and obvious. However, I believe a genuine issue of fact remains concerning whether, despite the obviousness of the danger, defendant breached its duty to protect plaintiff against an unreasonable risk of harm.

Plaintiff presented evidence that the steps at issue violated the BOCA building code adopted by the City of Flint at the time of the incident, and were defective and hazardous because they were of varying heights, had an unreasonably dangerous slant, and contained no handrail. Plaintiff's stairs were never cited for violation of the building code, since the stairs were in existence prior to the code's adoption in 1978. The fact that such conditions would violate the present code suggests that genuine issues of fact remain as to the existence of an unreasonable risk of harm, despite the obviousness of the steps. Accordingly, a trier of fact should be allowed to determine whether defendant breached his duty of care.

/s/ Jessica R. Cooper