

STATE OF MICHIGAN
COURT OF APPEALS

SHARON HEARNS and WAYNE HEARNS,

Plaintiffs-Appellants,

v

WESTLAWN CEMETERY ASSOCIATION OF
DETROIT,

Defendant-Appellee.

UNPUBLISHED
February 16, 2001

No. 220123
Wayne Circuit Court
LC No. 98-824919-NO

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting summary disposition to defendant under 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, Sharon Hearn, sustained an injury while attending funeral services at defendant cemetery. While walking to a gravesite, she stepped over a pile of branches stacked on the roadway. She fell, fracturing the radial neck of her right elbow. The trial court granted defendant's motion for summary disposition, finding that the branches did not constitute an unreasonable risk of harm, and defendant had no duty to warn of an open and obvious danger.

The duty of care owed to an invitee does not extend to conditions from which an unreasonable risk of harm cannot be anticipated or to dangers so obvious that an invitee can be expected to discover them himself. *Weakley v Dearborn Heights*, 240 Mich 382, 385; 612 NW2d 428 (2000). An invitor must warn of hidden defects, but is not required to eliminate or warn of open and obvious dangers unless the invitor should anticipate the harm despite the invitee's knowledge of it. *Id.* Whether a danger is open and obvious depends on whether it is reasonable to expect an average user of ordinary intelligence to discover the danger upon casual inspection. *Id.*

Plaintiff admitted that she saw the pile of branches. The danger was open and obvious,

and plaintiff failed to present any evidence showing that the branches posed an unreasonable risk of harm that could not be avoided.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Martin M. Doctoroff

/s/ Helene H. White