STATE OF MICHIGAN

COURT OF APPEALS

VIVIAN SMITH,

Plaintiff-Appellant,

v

KOHL'S DEPARTMENT STORE, INC.,

Defendant-Appellee.

UNPUBLISHED
April 20, 2001

No. 221246
Oakland Circuit Court
LC No. 98-009590-NO

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In this premises liability action, plaintiff seeks damages for injuries incurred when she tripped over the base of a display sign in defendant's store. The trial court agreed with defendant that the danger posed by the sign was open and obvious and dismissed the complaint.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

There is no dispute that plaintiff was an invitee to whom defendant owed the highest duty of care. She was on defendant's premises for a commercial purpose, i.e., to shop at defendant's store. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597-598, 604; 614 NW2d 88 (2000). A landowner is subject to liability for physical harm caused to his invitees by a condition on the land only if the owner (a) knows of, or by the exercise of reasonable care would discover,

* Circuit judge, sitting on the Court of Appeals by assignment.

the condition and should realize that it involves an unreasonable risk of harm to his invitees; (b) should expect that his invitees will not discover or realize the danger or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect his invitees against the danger. *Lawrenchuk v Riverside Arena, Inc*, 214 Mich App 431, 432-433; 542 NW2d 612 (1995). This duty is not absolute. *Douglas v Elba, Inc*, 184 Mich App 160, 163; 457 NW2d 117 (1990). It does not extend to conditions from which an unreasonable risk of harm cannot be anticipated or to open and obvious dangers. *Id.*; *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1, 6; 535 NW2d 215 (1995).

Where the danger is known to the invitee or is so obvious that the invitee might reasonably be expected to discover it upon casual inspection, the invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite the knowledge of it on behalf of the invitee. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992); *Novotny v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). Thus,

> if the . . . condition creates a risk of harm *only* because the invitee does not discover the condition or realize its danger, then the open and obvious doctrine will cut off liability if the invitee should have discovered the condition and realized its danger. On the other hand, if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions. The issue then becomes the standard of care and is for the jury to decide. [*Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995) (emphasis in original).]

Our review of the evidence leads us to conclude that plaintiff could have readily discovered the sign had she exercised ordinary care for her own safety. Plaintiff never testified that she neglected to see the sign because she was looking at merchandise displayed in the area, see *Jaworski v Great Scott, Inc*, 403 Mich 689, 699; 272 NW2d 518 (1978), or that other shoppers obstructed her view of it. She admitted that she tripped over the base of the sign because she was looking for her companion rather than watching where she was going. Had she looked where she was walking she could have easily discovered the base of the sign, which contrasted sharply with the floor, and taken appropriate measures to avoid it. We agree with the trial court that as a matter of law, defendant was entitled to judgment.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard