

STATE OF MICHIGAN
COURT OF APPEALS

SHELDON MILLMAN and JOY MILLMAN,

Plaintiffs-Appellants,

v

BINGHAM CENTER ASSOCIATES, LLC,

Defendant-Third Party Plaintiff-
Appellee,

and

AJAX PAVING INDUSTRIES INC.,

Third Party Defendant-Appellee,

UNPUBLISHED
November 9, 2001

No. 225700
Oakland Circuit Court
LC No. 99-012380-NO

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the circuit court's order dismissing their claims against defendant Bingham Center Associates. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The circuit court properly granted summary disposition pursuant to MCR 2.116(C)(10). In *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000), our Supreme Court explained that a landowner "is subject to liability for physical harm caused to his invitees by a condition on the land if the owner: (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that the condition involves an unreasonable risk of harm to such invitees; (b) should expect that 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 invitees against the danger."

Plaintiff Sheldon Millman stepped off of a paved driveway onto an unpaved landscaped area and tripped over a rut in the soil. Plaintiffs presented no evidence which would suggest that defendant Bingham Center Associates knew of this rut, should have discovered the rut through reasonable care, or realized that it posed an unreasonable risk of harm to invitees. The alleged

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

dangerous condition was in a garden or flower bed, an area where one would not ordinarily expect pedestrians to walk. Plaintiff testified at deposition that there was nothing which would obscure his view of the rut he tripped on. Even if defendant knew of the rut in the soil, there was no reason for it to expect that invitees would not discover or realize the danger and would fail to protect themselves against it.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker