STATE OF MICHIGAN

COURT OF APPEALS

RENEE MICKENS, Plaintiff-Appellant,	UNPUBLISHED May 3, 2002
v	No. 208269 Wayne Circuit Court
DEXTER CHEVROLET COMPANY, a/k/a HARRY SLATKIN BUILDERS, d/b/a SHERWOOD HEIGHTS APARTMENTS, and HARTMAN AND TYNER, INC., d/b/a SHERWOOD HEIGHTS APARTMENTS, Defendants-Appellees.	LC No. 96-616853-NO ON REMAND

Before: Sawyer, P.J., and Cavanagh and Fitzgerald, JJ.

SAWYER, P.J. (*dissenting*).

I dissent.

In our original opinion, we concluded, over my colleague's dissent, that the trial court correctly determined that there was no genuine issue of material fact regarding the applicability of the open and obvious danger doctrine. Thereafter, the Supreme Court vacated our opinion and remanded for reconsideration in light of their more recent decision in *Lugo v Ameritech*, 464 Mich 512; 629 NW2d 384 (2001).

On remand, the majority now reverses, concluding that there is a genuine issue of material fact regarding plaintiff's knowledge of the defective condition, a conclusion that is the direct opposite of what this Court decided in our first opinion. However, the majority does not reach this conclusion because of a change in the law announced in *Lugo*. Indeed, although the Supreme Court remanded this case for reconsideration in light of *Lugo*, the majority spends little time considering *Lugo*. In fact, the only consideration given to *Lugo* by the majority is to cite it for the proposition that there is no duty to protect invitees from open and obvious dangers unless the danger poses an unreasonable risk of harm. *Ante*, *slip op* at 2.

This case was not remanded to us to give plaintiff another bite at the apple on the question whether our original decision was correct. It was remanded to us to determine if, in

light of *Lugo*, a different result would be reached. It is clear from reviewing *Lugo* that it does not mandate a justifiable reason to change our original result.

I therefore stand by our original decision and would affirm.

/s/ David H. Sawyer