STATE OF MICHIGAN

COURT OF APPEALS

VINCENZO VALENTE,

Plaintiff-Appellant,

v

FOUNTAIN PARK WEST,

Defendant-Appellee.

UNPUBLISHED
August 23, 2002

No. 232428
Oakland Circuit Court
LC No. 00-022108-NO

Before: White, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition for defendant pursuant to MCR 2.116(C)(10) in this slip and fall premises liability action. We affirm. This appeal is being decided without oral argument according to MCR 7.214(E).

Plaintiff Vincenzo Valente, then seventy-nine years old, injured his left shoulder when he fell on an uneven sidewalk outside his apartment in August 1999. The apartment is owned by defendant Fountain Park West. Plaintiff tripped over a slightly raised concrete slab of the sidewalk when a car horn sounded and he turned his head toward the noise while he was walking. Plaintiff stated that he never noticed the raised slab before, although he traveled this sidewalk several times a day for approximately ten years. The trial court granted defendant's motion for summary disposition. The court held that the raised slab was open and obvious and that it was not otherwise unreasonably dangerous, concluding that defendant owed no duty to plaintiff to repair the sidewalk.

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim and is reviewed to determine whether the affidavits, pleadings, depositions, or any other documentary evidence establish a genuine issue of material fact to warrant a trial. *Spiek*, *supra* at 337, citing *Singerman v Municipal Bureau, Inc*, 455 Mich 135, 138; 565 NW2d 383 (1997). This Court will give the nonmoving party the benefit of all reasonable inferences when determining whether summary disposition is appropriate. *Betrand v Alan Ford, Inc*, 449 Mich 606, 615; 537 NW2d 185 (1995).

Possessors of land have a duty to exercise reasonable care to protect their invitees from unreasonable risks of harm posed by dangerous conditions of the land that the possessor knows or should know will not be discovered by invitees.[1] *Bertrand*, *supra* at 609. However, if the condition is open and obvious, the possessor generally has no duty to warn invitees of the condition. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 498-499; 595 NW2d 152 (1999). Whether a condition is open and obvious depends on whether it is reasonable to expect an average person of ordinary intelligence to discover the dangerous condition upon casual inspection. *Novotney v Burger King Corp*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

Ordinarily, uneven pavement is considered an open and obvious condition. *Weakley v Dearborn Heights*, 240 Mich App 382, 386; 612 NW2d 428 (2000), aff'd 246 Mich App 322 (2001). Consequently, injuries sustained from a condition of pavement are generally not compensable unless the area around the pavement has a unique characteristic making it unreasonably dangerous. *Id*.

Thus, to survive summary disposition, plaintiffs had to present a genuine issue of material fact regarding whether, despite the open and obvious nature of the alleged defect, it posed an unreasonable risk of harm. *Id*. In the present case, plaintiff conceded he simply was not looking where he was walking, which casts doubt on his claim that the raised concrete slab was *not* open and obvious. See *Lugo v Ameritech Corp*, 464 Mich 512, 517; 629 NW2d 384 (2001). The legal test for this inquiry asks whether it is reasonable to expect an average person of ordinary intelligence to discover the dangerous condition upon *casual inspection*. *Novotney*, *supra* at 475. Moreover, plaintiff has not identified a unique characteristic of the area around the pavement that posed an unreasonable risk of harm, despite its open and obvious nature. *Lugo*, *supra* at 517. Our review of photographs of the sidewalk confirms that there is no unique characteristic as a matter of law.

Therefore, plaintiff has not established a breach of any duty, and the trial court properly granted summary disposition for defendant.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

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[1] We note that plaintiff's brief final argument that defendant had actual or constructive notice of the raised slab is not dispositive concerning the open and obvious and unreasonably dangerous doctrines. See *Betrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Furthermore, plaintiff improperly cites no legal authority for this claim. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).