STATE OF MICHIGAN

COURT OF APPEALS

SUSAN HEIDER,

Plaintiff-Appellant,

v

BARLEY TRUCKING & EXCAVATING, INC,

Defendant-Appellee,

and

COMFORT MENOMINEE ASSOCIATES,

Defendant.

UNPUBLISHED
May 27, 2004

No. 251217
Menominee Circuit Court
LC No. 02-009963-NO

Before: Whitbeck, C.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff Susan Heider appeals as of right from the trial court's order granting summary disposition to defendants under MCR 2.116(C)(10). Plaintiff tripped and fell over a piece of asphalt when she was traversing a parking lot that was being resurfaced. Defendant Comfort Menominee Associates[1] owned the premises, and defendant Barley Trucking & Excavating, Inc.,[2] was the general contractor. The paving subcontractor was not named as a party. Because we agree with the trial court that the debris over which plaintiff tripped was open and obvious as a matter of law, we affirm the trial court's ruling.

We review a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10) de novo. On review, we "'must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law.'"

[1] Plaintiff does not appeal the trial court's ruling as to defendant Comfort Menominee Associates.

[2] "Defendant," unless otherwise noted.

Michigan Ed Employees Mutual Ins Co v Turow, 242 Mich App 112, 114; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

On appeal, plaintiff contends that defendant negligently breached its contractual duty to clean up debris from the parking lot area. But not only did plaintiff fail to plead negligent performance of a contractual duty in her original or subsequent amended complaints, she presented no evidence regarding the contract between the premises owner and defendant. In her brief on appeal, plaintiff simply states that defendant had a contractual duty to clean up the debris, and that "it is a fair inference that the laborer negligently failed to discover the piece of asphalt that tripped plaintiff." We decline to address plaintiff's claim. See *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993) (this Court is not obligated to review unpreserved claims of error), and *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998) (where a party merely announces a position and provides no authority to support it, we consider the issue waived).

Further, we agree that regardless how plaintiff characterizes her claim, the trial court correctly held that as a matter of law, the piece of asphalt was open and obvious because no reasonable mind could conclude otherwise. The open and obvious defense, which extends to claims against general contractors, see *Ghaffari v Turner Construction Co*, 259 Mich App 608, 614; 676 NW2d 259 (2003), shields a defendant from liability where an average pedestrian of ordinary intelligence should have discovered the offending item on casual inspection. *Hughes v PMG Building, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997).

Here, plaintiff testified that the piece of asphalt was approximately four inches thick and about the size of a dinner plate in diameter. Plaintiff also testified that she was walking in an area which she clearly knew was under construction. Although plaintiff stated that the piece of asphalt was black, matching the pavement underneath, her fall occurred in the daytime, and there was nothing preventing plaintiff from noticing the large piece of debris in her path. Thus, plaintiff did not present a genuine issue of material fact that the debris was not open and obvious, and she did not present a genuine issue of material fact that the debris had "special aspects" that made it unusually dangerous. See *Lugo v Ameritech Corp*, 464 Mich 512, 517; 629 NW2d 384 (2001).

Affirmed.

/s/ William C. Whitbeck
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello