

STATE OF MICHIGAN
COURT OF APPEALS

NANCY TORRES,

Plaintiff-Appellant,

v

GOODWILL INDUSTRIES OF GREATER
GRAND RAPIDS, INC.,

Defendant-Appellee.

UNPUBLISHED
December 7, 2010

No. 292138
Kent Circuit Court
LC No. 08-008861-NO

Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

GLEICHER, J. (*concurring*).

I concur in the result reached by the majority, on the basis of our Supreme Court's order in *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934 (2010). An order of the Supreme Court constitutes binding precedent when the rationale that the Court employed can be understood. *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 196; 650 NW2d 364 (2002). The Supreme Court declared in *Janson*, 486 Mich at 935, that "wintry conditions by their nature would . . . alert[] an average user of ordinary intelligence to discover the danger upon casual inspection." In my view, the reasonableness of an average user's conduct should comprise a jury question under MCL 600.2958, which provides that in an action based on tort "a plaintiff's contributory fault does not bar that plaintiff's recovery of damages." But for the Supreme Court's order in *Janson*, I would hold that a jury should decide whether on casual inspection plaintiff reasonably perceived the damp spot on the pavement to be water rather than black ice.

/s/ Elizabeth L. Gleicher