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STATE OF MICHIGAN
COURT OF APPEALS

JOHN WHEELER,

Plaintiff-Appellant,

v

BUSCH’S INC., and SIMSBURY F/14 LLC

Defendants-Appellees.

UNPUBLISHED

November 19, 2019

No. 344496

Oakland Circuit Court

LC No. 2017-156740-NO

Before: M. J. KELLY, P.J., and FORT HOOD and SWARTZLE, JJ.

M. J. KELLY, J. (*concurring*).

But for the Supreme Court’s order in *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934 (2010), I would hold that a jury should decide whether, on casual inspection plaintiff, John Wheeler, reasonably perceived the pavement to be wet rather than covered in black ice. However, as I am bound by our Supreme Court’s order in *Janson*, I concur in the result reached by the majority.¹

/s/ Michael J. Kelly

¹ An order of the Supreme Court is 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).