

STATE OF MICHIGAN
COURT OF APPEALS

TAMARA JESSEE,

Plaintiff-Appellant,

v

WALGREEN CO.,

Defendant-Appellee,

and

FRANCIS FLOOR CARE, INC.,

Defendant,

and

PAUL C. HAGADONE, doing business as FLOOR
PRO,

Defendant-Appellee.

UNPUBLISHED

October 25, 2012

No. 306563

Ogemaw Circuit Court

LC No. 10-657752-NO

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

RONAYNE KRAUSE, P.J. (*concurring in part and dissenting in part*)

I concur with the majority's conclusions regarding the open and obvious doctrine and the lack of special aspects in this case. However, I believe that plaintiff articulated a claim based on ordinary negligence. Because the open and obvious doctrine is not a valid defense to a claim based on ordinary negligence, I would reverse and remand on that issue.

Plaintiff's complaint alleges that Defendant Hagadone "owed a duty to use reasonable care in doing its work to protect the safety of invitees such as plaintiff shopping at the Walgreens Store[.]" This language makes it clear that plaintiff is alleging that "[d]efendant's *conduct* was thus an alleged basis of liability, independent of premises liability." *Laier v Kitchen*, 266 Mich App 482, 493; 702 NW2d 199 (2005) (emphasis in original). Furthermore, we have previously held that the open and obvious doctrine is inapplicable to claims based on ordinary negligence. *Hiner v Mojica*, 271 Mich App 604, 615-616; 722 NW2d 914 (2006).

Thus, summary disposition is improper to the extent that it applies to plaintiff's claims based on ordinary negligence. I express no opinion about the merits of such a claim or the

strength of plaintiff's case. However, it is this Court's duty to determine whether a genuine issue of material fact exists, and in this case it does. I would affirm in part, and reverse the summary disposition regarding plaintiff's ordinary negligence claim.

/s/ Amy Ronayne Krause