

STATE OF MICHIGAN
COURT OF APPEALS

ILENE PERNELL,

Plaintiff-Appellant,

v

SUBURBAN MOTORS COMPANY, INC.,

Defendant-Appellee.

UNPUBLISHED

April 23, 2013

No. 308731

Oakland Circuit Court

LC No. 2011-117193-NO

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

SAAD, J. (*dissenting*).

I respectfully dissent. The trial court ruled that a puddle of water is objectively open and obvious, regardless whether people noticed it only after plaintiff slipped on the water. This is simply a physical reality, and it holds true as much for a puddle of water as a banana peel or a parking lot curb. Simply because people may ignore something open and obvious until someone slips and, thus, draws attention to it, does not mean that the puddle or banana peel or curb only materialized after the fall. It remains true that, had someone looked down, the condition would have been apparent. Here, two employees testified that after plaintiff fell, they could clearly see the puddle of water, which was the size of a dinner plate, and plaintiff also said she could see the water after her fall. Plaintiff testified that nothing obscured her vision and no evidence suggests that something concealed the condition. Therefore, I would affirm the trial court's straightforward ruling that plaintiff's premises liability claim is barred by the open and obvious doctrine.

And, because plaintiff's claim sounds in premises liability, the trial court correctly ruled that plaintiff's negligence claim must be dismissed. The employee's actions did not cause plaintiff's fall. He and plaintiff both walked in the same direction and the employee did nothing to cause plaintiff's injury, which is premised on the condition of the premises, not the employee's conduct. Therefore, I would affirm the trial court's dismissal of plaintiff's ordinary negligence claim.

/s/ Henry William Saad