# STATE OF MICHIGAN

# COURT OF APPEALS

AMANDA CAMPBELL,

Plaintiff-Appellant,

v

ALLARD-DIX CENTER, L.L.C.,

Defendant-Appellee.

UNPUBLISHED
April 24, 2007

No. 273514
Wayne Circuit Court
LC No. 06-610997-NO

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in plaintiff's premises liability action. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On January 8, 2005, at approximately 9:30 p.m., plaintiff went to defendant's CVS Pharmacy and parked to the right of the entrance. Plaintiff did not recall exactly what the weather was like, but testified that it was "[j]ust like any other January day … it wasn't too cold or too warm," and that the temperature was "like 40 or 30." It was not snowing. There was snow on the grass, but not on the streets or sidewalks. After getting out of her car and taking approximately 10 to 15 steps, plaintiff fell in the parking lot. Plaintiff did not see ice either before or after her fall, but she assumed that she fell on water-covered ice because the ground felt slippery, cold, and wet. Defendant submitted National Weather Service records showing that the maximum temperature in the area on January 8, 2005, was 31 degrees, with a minimum temperature of 27 degrees; that the temperature at 9:54 p.m. was 25 degrees; and that there had been no significant precipitation all day.

The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10), holding that the alleged icy condition was open and obvious.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Lind v Battle Creek*, 470 Mich 230, 238;

681 NW2d 334 (2004); *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999); see also MCR 2.116(G)(6).

A landowner has a duty to exercise reasonable care to protect an invitee from unreasonable risks of harm caused by dangerous conditions on the land. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, landowners "are not absolute insurers of the safety of their invitees." *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). Thus, premises possessors are not required to protect invitees from "open and obvious dangers" unless "special aspects" exist that render an open and obvious danger unreasonably dangerous. *Lugo*, *supra* at 516-517.

A danger is open and obvious if "'an average user with ordinary intelligence [would] have been able to discover the danger and the risk presented upon casual inspection.'" *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 5; 649 NW2d 392 (2002), quoting *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). This test is objective; the question, therefore, is "'whether a reasonable person in [the plaintiff's] position would foresee the danger.'" *Corey*, *supra* at 5, quoting *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 11; 574 NW2d 691 (1997).

The danger presented by the accumulation of ice and snow has generally been held to be open and obvious. See *Teufel v Watkins*, 267 Mich App 425, 428; 705 NW2d 164 (2005). A plaintiff normally must present evidence of special circumstances to differentiate his case from the typical situation involving ice, snow, or frost. *Corey*, *supra* at 4-5, 8.

We conclude that a reasonably prudent person in plaintiff's position would have discovered the danger presented by the alleged presence of water and ice in defendant's parking lot. Plaintiff's accident took place in the middle of January. The temperature had been below freezing all day. Plaintiff recognized that the weather was typical for a January day, and she surmised that the temperature might have been as low as 30 degrees. Snow was visible on the ground. According to plaintiff, the pavement on which she fell was wet. Under these circumstances, an ordinarily prudent Michigan resident would have been able to appreciate the risk associated with walking in defendant's parking lot. In short, plaintiff has failed to present evidence of any special circumstances that would differentiate her case from the typical situation involving ice, snow, or frost. *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11; 643 NW2d 212 (2002); *Corey*, *supra* at 4-5, 8.[1] Accordingly, summary disposition was appropriately granted on the ground that the icy condition was open and obvious.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello

[1] Plaintiff does not contend that "special aspects" existed that rendered the icy condition unreasonably dangerous.