

Court of Appeals, State of Michigan

ORDER

Chanita Yancy v Conner Service Company

Docket No. 343520

LC No. 16-015158-NO

Christopher M. Murray
Presiding Judge

Karen M. Fort Hood

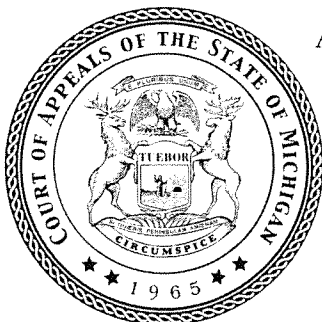
Anica Letica
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion to waive the requirements of MCR 7.209 is GRANTED.

Pursuant to MCR 7.205(E)(2) and in lieu of granting the application, the April 2, 2018, order of the Wayne Circuit Court denying summary disposition to defendant hereby is REVERSED. Considering the facts in a light most favorable to plaintiff, see *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999), the record before this Court demonstrates that defendant is not liable for the condition. Our Supreme Court has ruled that “potholes in pavement are an ‘everyday occurrence’ that ordinarily should be observed by a reasonably prudent person.” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 523; 629 NW2d 384 (2001). Similarly, an area of uneven, deteriorated and rotten pavement in a Michigan gas station parking lot is a common condition that reasonably prudent persons should observe and the photographs taken by plaintiff immediately after her fall clearly show the condition. The metal plate within the asphalt area does not comprise a unique situation leading to an unreasonably high likelihood of harm. Plaintiff could have stepped around the area and thereby could have avoided it. Further, the area did not pose the type of severe threat of injury that our Supreme Court envisioned in *Lugo*’s illustration of the deep, open, and unguarded pit. *Id.* at 518. This case is REMANDED for entry of an order of dismissal consistent with this order.

The motion for stay is DENIED AS MOOT.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

SEP 17 2018

Date

Chief Clerk