

STATE OF MICHIGAN
COURT OF APPEALS

DIANE ZIMMERMAN

Plaintiff-Appellant,

v

RANDY WINN and BRENDA WINN,

Defendants-Appellees.

UNPUBLISHED

September 20, 1996

No. 188363

LC No. 94-7442-NO

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff fell on steps and sued to recover damages for personal injury. The trial court found (1) that defendants owed no duty to plaintiff since any danger was open and obvious; and (2) that plaintiff would be unable to show causation. We note that our Supreme Court recently clarified the rule of premises liability, particularly as it pertains to steps, in *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), and we affirm on that basis.

Defendants own a house built on a small hill above the level of the adjacent sidewalk. The steps in question lead from the house down to the sidewalk. At the time of the incident, defendants leased the house to acquaintances of plaintiff. On June 16, 1992, plaintiff was leaving the premises following a visit when she fell from the steps onto the sidewalk.

In *Bertrand*, our Supreme Court established that the risk of harm from "ordinary" steps is open and obvious, and, thus, presumptively not unreasonable. *Bertrand, supra*, at 617. Accordingly, the possessor of land has no duty to make ordinary steps "foolproof." *Id.* Only when there is something "unusual" about the "character, location, or surrounding conditions" of steps does the premises owner retain a duty to exercise reasonable care. *Id.* Thus, we need not address plaintiff's first argument that the danger posed by the steps was not open and obvious.

Plaintiff contends, however, that one of the steps from which she fell had an improperly angled riser, and that this condition qualified under the exception noted in *Bertrand* for unusual character, location, or surrounding conditions. We disagree. In the extensive case law in which a question regarding the character, location, or surrounding conditions of steps was resolved (including the consolidated cases decided in *Bertrand*), the exception was uniformly applied to what may be described as the general layout and adjacent structures of the steps involved. See e.g. *Bertrand, supra*, at 618-625; *Beardsley v RJ Manning Co*, 2 Mich App 172, 174; 139 NW2d 129 (1966). The exception has never been applied to the

allegedly flawed construction of the steps themselves, and we decline to so extend its scope. Accordingly, we find that defendants owed no duty to plaintiff, and summary disposition in defendants' favor was thus proper. In light of this ruling, we do not address plaintiff's argument that her expert's deposition testimony was sufficient to create a genuine issue of fact regarding causation.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra