

STATE OF MICHIGAN
COURT OF APPEALS

ESSIE L. RATCLIFF, a/k/a
ESSIE L. RATLIFF and
ARTHUR RATCLIFF, a/k/a
ARTHUR RATLIFF,

UNPUBLISHED

October 15, 1996

Plaintiffs–Appellants,

v

No. 186531

LC No. 94-471407 NO

CITY OF PONTIAC,

Defendant–Appellee.

Before: Reilly, P.J., and White, and P.D. Schaefer,* JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court’s order granting defendant’s motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10). We reverse.

On appeal, plaintiffs assert that the trial court erred in granting defendant’s motion for summary disposition on the basis that defendant’s allegedly defective sidewalk presented an open and obvious danger. We agree. A trial court’s determination on a motion for summary disposition is reviewed de novo. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

Recently, in *Haas v City of Ionia*, 214 Mich App 361, 364; 543 NW2d 21 (1995), this Court held that the openness and obvious nature of a danger does not absolve a municipality of its statutory obligation to repair its sidewalks, but may be used by the municipality to establish the comparative negligence of a plaintiff. *Id.*, 364¹.

In this case, the trial court specifically relied on the open and obvious doctrine as a basis for dismissing plaintiffs’ case. However, based on this Court’s holding in *Haas, supra*, we conclude that

* Circuit judge, sitting on the Court of Appeals by assignment.

the trial court erred in summarily dismissing plaintiffs' cause of action because of the open and obvious doctrine.

Reversed and remanded for further proceedings. According to defendant, even if *Haas* is appropriate, the court reached the right result because the record shows that plaintiff's own negligence was the sole proximate cause of her fall. Plaintiff's alleged comparative negligence was not the subject of defendant's motion for summary disposition, and we are not persuaded that the record demonstrates that defendant is entitled to summary disposition on this basis at this time. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ Helene N. White

/s/ Philip D. Schaefer

¹ The *Haas* Court also noted that its decision was consistent with this Court's prior decision in *Walker v City of Flint*, 213 Mich App 18; 539 NW2d 535 (1995), a case on which plaintiffs rely as a basis for reversal.