STATE OF MICHIGAN

COURT OF APPEALS

THOMAS ANTHONY REGAN,

Plaintiff-Appellant,

v

GPV, INC., d/b/a RAINBOW INN OF HAZEL PARK,

Defendant-Appellee.

UNPUBLISHED
November 5, 1996

No. 183838
LC No. 94-469239-NO

Before: Markman, P.J., and Smolenski and G. S. Buth,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order which granted summary disposition to defendant on the ground that there was no genuine issue of material fact that defendant did not owe a duty to warn plaintiff of an open and obvious condition. MCR 2.116(C)(10). We affirm.

This action arises from events which took place in July, 1992 when plaintiff, as a business invitee, was dancing on the dance floor of the Rainbow Inn when he spun around with his arms extended and smashed his right hand into the glass globe of a gumball machine situated about a foot from the dance floor and severely cut an artery in his wrist. Plaintiff testified that he had been at the Inn at least a dozen times before the night of the accident and was aware of the placement of the gumball machine. He further indicated that lighting in the Inn was sufficient to enable him to observe the machine.

Plaintiff has failed to present any evidence that the gumball machine posed an unreasonable risk of harm. Having reviewed the record, and giving plaintiff the benefit of any reasonable doubt, we hold that the trial court properly ruled that there was no genuine issue of material fact that the gumball machine, which plaintiff smashed his hand into while dancing, was an open and obvious condition of which defendant had no duty to warn plaintiff. *Riddle v McLouth Steel*, 440 Mich 85, 99-100; 485 NW2d 676 (1992). The *Riddle* Court stated,

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

> [W] here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite the knowledge of it on behalf of the invitee.

Id. at 96. See also *Novotney v Burger King* (On Remand), 198 Mich App 470, 473; 499 NW2d 379 (1993).

In the instant case, the facts show that plaintiff was aware of the actual condition and that he encountered an open and obvious condition. The condition permitted him the freedom to intelligently choose to incur the open and obvious risk by dancing in an "erratic" manner so that his arm struck the glass globe of the gumball machine. The lighting was sufficient; plaintiff was aware of the machine and had seen it many times; he knew the machine's location well. There was ample evidence that plaintiff could intelligently choose not to encounter the obvious and known risk. Cf. *Knight v Gulf & Western Properties*, 196 Mich App 119; 492 NW2d 761 (1992).

That plaintiff may have forgotten that the machine was there during his dancing does not alter the outcome, in our judgment. Defendant should not face possible liability on the basis that the invitee (here plaintiff) momentarily forgot or overlooked an open and obvious condition. As the Supreme Court testified in *Bertrand v Alan Ford*, 449 Mich 606; 537 NW2d 185 (1995),

> [T]he overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary steps "foolproof."

Id. at 616-17.

The accident, rather than being fairly attributable to the actions of defendant, was the result ultimately of plaintiff's carelessness. There is no evidence that would create a question of fact that the risk of harm from the gumball machine was unreasonable. Accordingly, the trial court did not err in granting summary disposition to defendant. MCR 2.116(C)(10); *Bertrand, supra*; *Riddle, supra.*

Affirmed.

/s/ Stephen J. Markman
/s/ Michael R. Smolenski
/s/ George S. Buth