STATE OF MICHIGAN

COURT OF APPEALS

PEARLINE O'NEAL,

Plaintiff-Appellant,

v

PARKE-DAVIS,

Defendant-Appellee.

UNPUBLISHED
May 2, 1997

No. 168894
Washtenaw Circuit Court
LC No. 92-007804-NO

Before: Saad, P.J., and Holbrook, Jr., and G.S. Buth*, JJ.

PER CURIAM.

In this premises liability case, 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). We reverse and remand.

Plaintiff alleged in her complaint that, while an invitee on defendant's premises, she slipped and fell on some icy steps, injuring herself. At deposition, plaintiff testified that she was taking a "shortcut" from one part of defendant's building to another when she encountered the icy steps in an outdoor courtyard area. She testified that she saw the ice before proceeding down the steps. On the basis of this testimony, the trial court concluded that defendant was entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10), relying on *Riddle v McLouth Steel Products*, 440 Mich 85; 485 NW2d 676 (1992). We disagree.

Summary disposition may be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). In reviewing such a motion, the court must make all reasonable inferences in favor of the nonmoving party. *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). Although we agree that plaintiff's deposition testimony established that plaintiff was aware of the presence of ice on the steps, we do not agree that defendant was thereby entitled to judgment as a matter of law.

A possessor of land has a duty "to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land." *Williams v Cunningham*

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

Drug Stores, 429 Mich 495, 499; 418 NW2d 381 (1988). In this case, the parties do not question plaintiff's status as an invitee for purposes of this appeal.

As indicated, the trial court relied on *Riddle, supra*, in concluding that plaintiff's acknowledged awareness of the ice entitled defendant to judgment as a matter of law. However, in *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), our Supreme Court clarified its decision in *Riddle*. Although reaffirming the open and obvious danger doctrine discussed in *Riddle*, the Supreme Court in *Bertrand* clarified that the obviousness of a condition, or knowledge of it by an invitee, will not always relieve a possessor of land of the duty of reasonable care. The Supreme Court explained that, "if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions." *Bertrand*, *supra* at *611*. In discussing the types of cases in which a possessor of land will not be relieved of the duty of reasonable care, notwithstanding the obviousness of a condition or knowledge of it by the invitee, the Supreme Court quoted from 2 Restatement Torts 2d, § 343A, comment f, p 220, which states:

> There are, however, cases in which the possessor of land can and should anticipate that the dangerous condition will cause physical harm to the invitee notwithstanding its known or obvious danger. In such cases the possessor is not relieved of the duty of reasonable care which he owes to the invitee for his protection. This duty may require him to warn the invitee, or to take other reasonable steps to protect him, against the known or obvious condition or activity, if the possessor has reason to expect that the invitee will nevertheless suffer physical harm.
>
> Such reason to expect harm to the visitor from known or obvious dangers may arise, for example, *where the possessor has reason to expect . . . that the invitee will proceed to encounter the known or obvious danger because to a reasonable man in his position the advantages of doing so would outweigh the apparent risk*. [449 Mich at 611-612. Emphasis added.]

The alleged hazardous condition in this case involved an accumulation of ice on some steps. Our Supreme Court has held that an invitor "has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation." *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; NW2d 732 (1975), relying on *Kremer v Carr's Food Center, Inc*, 462 P2d 747 (Alas, 1969). In *Perry v Hazel Park Raceway*, 123 Mich App 542, 549-550; 332 NW2d 601 (1983), this Court observed that the exact condition involved in this case (icy steps) may constitute an unreasonably dangerous condition, notwithstanding the invitee's awareness of the condition:

> "[W]here the condition is one such as icy steps, which cannot be negotiated with reasonable safety even though the invitee is fully aware of it, and, because the premises are held open to him for his use, it is to be expected that he will nevertheless proceed to encounter it. In all such cases, the jury may be permitted to find that

> obviousness, warning or even knowledge is not enough." Prosser, Torts (4th ed), § 61, pp 394-395. [Footnote omitted.]

See also *Bertrand, supra* at 625 (Weaver, J., concurring in part and dissenting in part) (noting that cases finding the risk of harm unreasonable despite its obviousness or despite the invitee's awareness of the condition "typically involve hazardous natural conditions such as accumulations of snow and ice").

Defendant argues that plaintiff should be barred from recovery because she could have taken an alternative route to the cafeteria (plaintiff's destination), or could have gotten a drink of water from another location in the building (the purpose of plaintiff's trip). For purposes of deciding defendant's motion for summary disposition, defendant's focus on the reasonableness of *plaintiff's* conduct is improper where the essential matter in dispute is whether *defendant* breached its duty to provide a reasonably safe premises for its invitees. Questions regarding the reasonableness of plaintiff's conduct under the circumstances are relevant to the issue of her comparative negligence, which must be determined by the trier of fact. See *Quinlivan, supra* at 261. See also *Riddle, supra* at 98-99; *Knight v Gulf & Western Properties, Inc*, 196 Mich App 119, 130; 492 NW2d 761 (1992).

Accordingly, we find that a genuine issue of material fact exists regarding whether the risk of harm associated with the icy steps was unreasonable, despite its obviousness or despite plaintiff's awareness of the condition. Therefore, summary disposition was inappropriate.

Reversed and remanded for further proceedings on plaintiff's claim. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ George S. Buth