STATE OF MICHIGAN

COURT OF APPEALS

PEARLINE O'NEAL,

Plaintiff-Appellant,

v

PARKE-DAVIS,

Defendant-Appellee.

UNPUBLISHED

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

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

SAAD, J. (dissenting).

I respectfully dissent.

Defendant clearly had no reasonable expectation that any employee would use a seldom-used (during winter months) snow/ice-covered courtyard as a shortcut to get from one area of its building to another. This is clear for the obvious and undisputed reason that this snow-covered courtyard is simply not used as an access route. For this reason alone, I would affirm the trial court's grant of summary disposition. Also, plaintiff testified that she saw the dangerous ice and snow, but took the shortcut nonetheless because she did not wish to take the longer path, through the building, to get a drink of water. Again, for this reason alone, I would affirm the trial court's grant of summary disposition. Plaintiff alone should be accountable for her frolic and her choice to take the shorter but obviously dangerous path to get her drink.

Simply because this case involves icy steps in no way warrants the reflex application of *Perry v Hazel Park Harness Raceway,* 123 Mich App 542; 332 NW2d 601 (1983). *Perry* and similar cases only impose liability consistent with the landowner's reasonable expectations and plaintiff's reasonable conduct. Here, where it is neither reasonable for the defendant to anticipate the use in issue nor reasonable for plaintiff to engage in the conduct causing her injury, the open and obvious doctrine should, as the trial court found, bar recovery.

/s/ Henry William Saad

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