

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL J. DOYLE,

Plaintiff-Appellant,

v

LAIDLAW WASTE SYSTEMS, INC.,

Defendant-Appellee.

UNPUBLISHED

July 11, 1997

No. 184762

Ottawa Circuit Court

LC No. 94-020390-NO

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition to defendant on the ground of open and obvious danger, after he fell into a dumpster at defendant's landfill. We affirm.

A landowner has a legal duty to business invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition of the land which the landowner knows or should know the invitees will not discover, realize or protect themselves against. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 609; 537 NW2d 185 (1995). However, a landowner is not liable for invitees' injuries on the land when the danger is known or obvious to the invitees, unless the landowner should anticipate the harm despite such knowledge or obviousness. *Id.*, p 610. There is no duty to warn of a fully obvious condition; however, the landowner may still have a duty to protect an invitee against foreseeably dangerous conditions. *Id.*, pp 610-611. The question is whether the risk of harm remains unreasonable despite its obviousness or despite an invitee's knowledge of it. *Id.*, p 611.

In this case, the condition of the landfill premises was clearly open and obvious, and plaintiff was admittedly aware of the condition. There was also no unreasonable risk of harm. It was not foreseeable that an invitee to the landfill would try to clear debris by kicking at it while standing next to a deep pit with only a short retaining wall. An invitee would reasonably be expected to protect himself by refraining from acting in this manner. One would not expect the area around a landfill to be pristine. Further, while a higher retaining wall might have prevented plaintiff's fall, it would also defeat the utility of the landfill by making it unreasonably difficult to dump trash.

Plaintiff has not shown that, in the face of an open and obvious condition of which he was aware, defendant's premises nevertheless created an unreasonable risk of harm.

Affirmed.

/s/ Harold Hood

/s/ Maureen P. Reilly