

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL J. DOYLE,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 184762

Ottawa Circuit Court

LIDLAW WASTE SYSTEMS, INC.,

LC No. 94-020390-NO

Defendant-Appellee.

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

MURPHY, J. (dissenting).

I respectfully dissent.

I agree that the danger of tripping or falling over such a wall is open and obvious. Accordingly, a failure to warn theory cannot establish liability. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 614; 537 NW2d 185 (1995). However, in my opinion, because of the unusual or special aspects of this particular wall, i.e., its location (in an unloading area at a landfill where invitees deposit, sometimes heavy, refuse over the wall and into dumpsters up to ten feet below the wall) and the surrounding conditions (the accumulation of debris and refuse near the base of the wall where invitees stand to unload their refuse), I think question of fact arises as to whether the risk of harm remained unreasonable despite its obviousness and required defendant to take additional precautions. *Id.* at 614, 617. Issues of plaintiff's conduct under these circumstances should be addressed by assessing plaintiff's comparative negligence.

I would reverse and remand for further proceedings.

/s/ William B. Murphy