STATE OF MICHIGAN

COURT OF APPEALS

KEVIN NOTTAGE,

Plaintiff-Appellant,

v

GEORGE NOTTAGE and EDWINA NOTTAGE,

Defendants-Appellees.

UNPUBLISHED
October 7, 1997

No. 195416
Wayne Circuit Court
LC No. 94-432119-NO

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for a directed verdict in this premises liability action. We affirm.

On July 5, 1993, plaintiff, accompanied by Geraldine Winfield, visited defendants at their home for purposes of attending a family party. During a three-on-three basketball game in defendants' driveway, plaintiff fell and injured his knee. Plaintiff claimed that a two-inch raised cement slab had been the cause of his injury.

Plaintiff contends that the trial court's grant of defendants' motion for directed verdict constituted error. We disagree. This Court reviews a trial court's grant or denial of a motion for directed verdict de novo. *Meagher v Wayne State Univ*, 222 Mich App 700, 708 ___ NW2d ___ (1997). It should be noted that directed verdicts, particularly in negligence cases, are viewed with disfavor. *Berryman v K Mart Corp*, 193 Mich App 88, 91; 483 NW2d 642 (1992) "When evaluating a motion for directed verdict, a court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party." *Meagher*, *supra*. Whenever a fact question exists upon which reasonable persons may differ, the trial judge may not direct a verdict. Conversely, when no fact question exists, the trial judge is justified in directing a verdict. *Mich Mut Ins Co v CNA Ins Cos*, 181 Mich App 376, 380; 448 NW2d 854 (1989).

To establish a prima facie case of negligence, a plaintiff must prove (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). A social guest is considered a

licensee for purposes of determining the duty the possessor of land owes the visitor. See *Stanley v Town Square Coop*, 203 Mich App 143, 147; 512 NW2d 51 (1993); *Bradford v Feeback*, 149 Mich App 67, 70; 385 NW2d 729 (1986). In *Preston v Sleziak*, 383 Mich 442; 175 NW2d 759 (1970), the Supreme Court described the duty possessors of land owe their adult licensees as follows:

> "A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,
>
> "(a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
>
> "(b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
>
> "(c) the licensees do not know or have reason to know of the condition and the risk involved." [*Id*. at 453, quoting 2 Restatement of Torts (2d), § 342, p 210.]

"[A] possessor of land owes no duty [vis-a-vis a licensee] regarding open and obvious dangers." *White v Badalamenti*, 200 Mich App 434, 437; 505 NW2d 8 (1993). A condition is open and obvious if "an average user with ordinary intelligence [would] have been able to discover the danger and the risk presented upon a casual inspection." *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

Plaintiff points to *White, supra*, in order to show that this Court previously held that whether a condition presents an open and obvious danger may constitute a factual question to be determined by the trier of fact. However, *White, supra*, can be distinguished from the case at bar in that plaintiff admitted that he could have seen the raised cement slab on the day of the accident and on a prior occasion if he had looked at the area. By contrast, in *White, supra*, this Court was not presented with evidence demonstrating actual or constructive knowledge by the plaintiff of the dangerous condition.

Plaintiff's reliance on *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), is also misplaced. As *Bertrand* dealt with an invitee rather than with a licensee, and § 342 of 2 Restatement of Torts 2d and its comment (b) indicate that the duty toward a licensee does not arise if the danger is open and obvious, plaintiff's argument that defendants still owed a duty to protect despite the open and obvious condition of the raised cement must be rejected.

Plaintiff's testimony clearly indicates that plaintiff was an adult social guest at defendants' home on the day of the accident. In applying the *Novotney* analysis to the case at bar, we hold that the condition of the raised cement slab was open and obvious as the condition was readily noticeable upon a casual inspection. Indeed, plaintiff admitted that, on the day of the accident and on a prior occasion (when he had helped George Nottage move into the home), the raised cement slab was "readily

observable" if he had looked at that area. Plaintiff's girlfriend also testified that she observed the raised cement slab on the day of the accident, before the fall actually occurred.

Since a casual inspection of the driveway would have put plaintiff on notice with respect to the raised cement slab, the condition was open and obvious as a matter of law, and plaintiff failed to establish the duty element of his negligence action. Therefore, the trial court was justified in granting defendants' motion for a directed verdict.

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Robert P. Young, Jr.