# STATE OF MICHIGAN

# COURT OF APPEALS

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RALPH BOOZER,

Plaintiff-Appellant,

v

CITY OF ADRIAN,

Defendant-Appellee.

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UNPUBLISHED
October 10, 1997

No. 195725
Lenawee Circuit Court
LC No. 95-006511 NO

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Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Plaintiff sued for personal injuries sustained when, during a midnight stroll, he tripped and fell on a sidewalk in the City of Adrian, at a point where the roots of a nearby tree had created a slight disparity in level between two adjacent slabs of concrete sidewalk. The Lenawee Circuit Court granted defendant's motion for summary disposition, concluding that reasonable jurors could not disagree but that the danger presented was not unreasonable. This case is being decided without oral argument pursuant to MCR 7.214(E).

In opposing summary disposition, plaintiff submitted his own affidavit, plus the affidavits of two supposed experts, which were mainly in conclusory form. Defendant submitted photographs, which have not been transmitted to this Court as part of the lower court record. For purposes of the present appeal, it is assumed that the "two inch rule" does not apply. *Glancy v City of Roseville*, 216 Mich App 390; 549 NW2d 78 (1996).

In the absence of the two inch rule, ordinarily the issue of whether a particular sidewalk defect presents an unreasonable danger is a jury submissible issue. *Harris v City of Detroit*, 367 Mich 526, 529 ff; 117 NW2d 32 (1962) (Adams, J., dissenting), adopted in *Rule v Bay City*, 387 Mich 281, 283; 195 NW2d 849 (1972). Nonetheless, "if upon a careful consideration of all the facts and circumstances, it is the opinion of the trial judge that, as a matter of law, no negligence existed on the part of the city, then, he should so rule and direct a verdict for the defendant." *Harris, supra* at 536.

Here, the affidavits of plaintiff's experts indicate that the slab of sidewalk on which he fell had an upward angle of 5°, and his expert opines that this is an unacceptable deviation from the horizontal.

Such a contention cannot be accepted; there is no principle of Michigan tort jurisprudence which requires cities to bulldoze their streets and sidewalks so that the underlying terrain is perfectly flat. A reasonably prudent person would anticipate that a sidewalk would rise and fall with the local terrain, and it is only unexpected hazardous differentials between adjacent slabs of sidewalk, or perhaps breaks within a slab, that would ordinarily give rise to municipal liability. See *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614, 621; 537 NW2d 185 (1995). On this record, the trial court's conclusion that reasonable minds could not disagree but that no unreasonable hazard existed is amply supported by the record and therefore summary disposition was properly granted.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Henry W. Saad