STATE OF MICHIGAN

COURT OF APPEALS

DWIGHT D. DUNSMORE,

Plaintiff-Appellant,

v

TERRY P. DUNSMORE and DONNA DUNSMORE,

Defendants-Appellees.

UNPUBLISHED
November 21, 1997

No. 196468
St. Clair Circuit Court
LC No. 95-001471-NI

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition to defendants in this premises liability case. We affirm.

In granting summary disposition to defendants, the trial court concluded that there was no issue of material fact as to defendants' negligence, but did not address plaintiff's status or whether defendants owed a duty to him. Plaintiff contends that he was an invitee because he went to the premises for the purpose of helping his brother, defendant Terry Dunsmore, in the construction of his house. Because plaintiff went to the premises for the purpose of providing a benefit to the landowner, *Doran v Combs*, 135 Mich App 492, 496; 354 NW2d 804 (1984); *LeVeque v LeVeque*, 41 Mich App 127, 130; 199 NW2d 675 (1972), we agree with plaintiff that his status was that of an invitee.

In *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995), the Supreme Court held that an invitee is owed the duty as set forth in Restatement 2d of Torts § 343:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) fails to exercise reasonable care to protect them against the danger.

Even if the risk of harm is open and obvious, a landowner may nonetheless be required to exercise reasonable care to protect an invitee from the dangerous condition. *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 140; 565 NW2d 383 (1997). A defendant will be liable for an open and obvious risk if he should have anticipated the harm despite the plaintiff's knowledge of the hazardous condition. *Id.* at 141.

In this case, defendants did not owe plaintiff a duty because the risk of the hazard presented by the stack of drywall against the framework constructed by defendant Terry Dunsmore was open and obvious. Furthermore, defendant Terry Dunsmore had no reason to believe that plaintiff would not discover or realize the danger, or that he would fail to protect himself against it. Accordingly, defendants were properly granted summary disposition for any liability arising from the injuries plaintiff suffered when the stack of drywall collapsed on top of him. Because we affirm the trial court's grant of summary disposition on this basis, it is unnecessary to reach the issue of the volunteer doctrine because consideration of that issue is not necessary to a proper determination of this case. *Providence Hospital v Labor Fund*, 162 Mich App 191, 194-195; 412 NW2d 690 (1987).

Finally, we note that there is no merit to plaintiff's claim that the trial court prematurely granted summary disposition because discovery was incomplete. Plaintiff identifies nothing that he expects to discover about the factual scenario that would change the simple fact that defendant Terry Dunsmore was not negligent. Therefore, summary disposition was proper. See *Gara v Woodbridge Tavern*, 224 Mich App 63, 68; ___ NW2d ___ (1997).

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage