

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL DONEMBERG,

Plaintiff-Appellant,

v

JAMIE INVESTMENT CO.,

Defendant-Appellee.

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UNPUBLISHED

November 21, 1997

No. 198418

Oakland Circuit Court

LC No. 96-511014 NO

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order of the Oakland Circuit Court summarily dismissing his premises liability action pursuant to MCR 2.116(C)(10), in light of the open and obvious danger doctrine. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The threshold issue of duty of care must be decided by the trial court as a matter of law. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 95; 485 NW2d 676 (1992). A possessor of land owes no duty to warn his or her invitees about the risks associated with an activity or condition of the land where those risks are either known or open and obvious to the invitees. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 610-611, 614; 537 NW2d 185 (1995). The risks associated with a condition of the land are open and obvious when an average user of ordinary intelligence would discover the risks presented by the condition upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 449 NW2d 379 (1993). Where the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the possessor of land is required to take reasonable precautions to protect the invitee from the unreasonable risk of harm. *Bertrand, supra*, pp 611, 613, 614, 617.

The photograph of the site of plaintiff's fall, along with the other documentary evidence submitted to the trial court, established as a matter of law that the risk of tripping over a standard cement parking curb located in a parking lot was open and obvious. Moreover, plaintiff failed to present any facts establishing that the curbing posed an unreasonable risk of harm. Under these

circumstances, the open and obvious danger doctrine precludes plaintiff's recovery for his injuries from defendant.

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.