

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SANDRA ALTGELT,

Plaintiff-Appellant,

v

PINE AIRE APARTMENTS LIMITED  
PARTNERSHIP, R & T MANAGEMENT, INC.,  
and EMPIRE FIRE & MARINE INSURANCE  
COMPANY, a/k/a EMPIRE INDEMNITY  
INSURANCE COMPANY,

Defendants-Appellees.

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UNPUBLISHED

January 5, 2001

No. 215075

Oakland Circuit Court

LC No. 98-003439-NO

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(10) in this premises liability action. We reverse.

Plaintiff Sandra Altgelt slipped and fell on ice and snow at an apartment complex owned and/or managed by defendants while leaving a friend's apartment. Plaintiff fell while walking toward the parking lot after exiting the apartment through a back door where the snow had been shoveled down to a grass pathway by defendants' maintenance personnel. Plaintiff did not exit through the front door where a sidewalk had been cleared. In granting defendants' motion for summary disposition, the trial court concluded that the icy pathway presented an open and obvious danger and did not pose an unreasonable risk of harm because defendants provided a cleared alternate route to the parking lot.

This Court reviews a trial court's grant of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion brought under MCR 2.116(C)(10), this Court reviews the documentary evidence to determine whether a party was entitled to judgment as a matter of law or whether a genuine issue of material fact exists. *Id.* This Court views the facts in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 75; 597 NW2d 517 (1999).

Plaintiff argues on appeal that the open and obvious defense does not apply to her "duty to maintain" premises liability claim. Since plaintiff filed her appeal, this Court addressed this

issue in *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999) and held that the open and obvious doctrine applies in premises liability claims regardless of the alleged theory of liability. Therefore, the trial court properly considered the open and obvious defense with regard to plaintiff's "failure to maintain" premises liability claim.

Plaintiff next argues that, even if the open and obvious defense was applicable to her claim, there was a genuine issue of material fact as to whether the icy pathway on which she slipped and fell was an open and obvious danger. We agree.

Landowners have a legal duty to exercise reasonable care to protect invitees<sup>1</sup> from an unreasonable risk of harm caused by a dangerous condition on the land that the owner knows or should know the invitees will not discover, realize, or protect themselves against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). However, a premises owner does not have a duty to protect invitees from open and obvious dangers. *Millikin, supra* at 495. A danger is open and obvious if it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. *Hughes v PMG Building, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997).

The trial court found that "plaintiff was injured because [sic] in deciding to walk on the snow covered pathway, although she knew of the icy condition." However, plaintiff testified in her deposition that she could see the shoveled path in front of her, although it was dark, but did not know about or see the ice until she fell. The trial court's finding that plaintiff knew that the pathway was icy was not supported by her deposition testimony. Further, plaintiff presented an affidavit from a witness who was with plaintiff when she fell and an affidavit from a witness who was at the scene shortly after plaintiff fell. Both affiants indicated that the icy condition of the pathway was not readily apparent because of the nature and location of the path, the quality of the lighting, and the darkness of the night.

Viewing the evidence in a light most favorable to plaintiff, a question of fact exists as to whether the pathway's icy condition was an open and obvious danger. Therefore, the trial court erred in granting defendants' motion for summary disposition. In light of this Court's reversal, it is unnecessary to resolve plaintiff's other issues on appeal.

Reversed and remanded. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter

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<sup>1</sup> Defendants do not dispute plaintiff's alleged invitee status.