

STATE OF MICHIGAN
COURT OF APPEALS

REBECCA KIREJCZYK,

Plaintiff-Appellant,

v

CARRIE HALL, STEVEN HALL, CYNTHIA
KLEIN, and JAMES DMYTRUSZ,

Defendants,

and

SEARS, ROEBUCK, & CO.,

Defendant-Appellee.

UNPUBLISHED
November 5, 2002

No. 233708
Wayne Circuit Court
LC No. 99-910653-NO

Before: Talbot, P.J., and Whitbeck, C.J., and Gage, J.

PER CURIAM.

Plaintiff Rebecca Kirejczyk appeals as of right from a trial court order granting summary disposition in this premises liability case in favor of defendant Sears, Roebuck, and Company under MCR 2.116(C)(10). We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

Kirejczyk argues that the trial court erred by granting summary disposition in favor of Sears. We disagree. We review a trial court's decision regarding a summary disposition motion de novo.¹ In reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the documentary evidence submitted in a light most favorable to the nonmoving party to decide if a genuine issue of material fact exists.² Kirejczyk was apparently injured in a motor vehicle collision in the parking lot of one of Sears' stores. Kirejczyk's position is that the parking lot was unreasonably dangerous in its design and layout because of a lack of signs or other traffic controls. A premises possessor generally owes invitees a duty to protect them against an

¹ *Schuster Construction Services, Inc v Painia Development Corp*, 251 Mich App 227, 230; 631 NW2d 346 (2002).

² *Schuster Construction, supra* at 230-231.

unreasonable risk of harm caused by a dangerous condition on the land.³ However, this duty does not generally include removing open and obvious dangers.⁴ The critical question is whether there are “special aspects” that differentiate an open and obvious condition from “typical open and obvious risks” and thereby create an unreasonable risk of harm.⁵ In this case, the condition of the parking lot was open and obvious. Further, it is typical for parking lots outside businesses to lack signs or other traffic controls. Drivers are expected to simply rely on traffic laws and customary practices while driving in such parking lots. Thus, we conclude that the trial court correctly granted summary disposition in favor of Sears because no reasonable factfinder could conclude that the condition of the parking lot involved an unreasonable risk of harm.

We note that Kirejczyk characterizes the open and obvious doctrine as a “defense” that should not apply in this case because she was a passenger in a vehicle who lacked an ability to react to open and obvious dangers. However, the open and obvious doctrine is not truly a defense. The Michigan Supreme Court explained in *Lugo v Ameritech Corp*, that the open and obvious doctrine is not an exception to the general duty owed invitees, but rather is “an integral part of the definition of that duty.”⁶ Accordingly, the open and obvious doctrine is not a defense available to a premises possessor if a plaintiff shows that a condition is unreasonably dangerous, but rather is a critical consideration in determining if there is an unreasonably dangerous condition at all. Further, in *Lugo*, the Court noted that the question with regard to the duty owed an invitee is the condition of the premises and that comparative negligence by a plaintiff does not bar a cause of action.⁷ It follows that a particular plaintiff’s lack of negligence is likewise immaterial because the necessary inquiry is whether the condition of the premises is unreasonably dangerous, not the subjective degree of care used by a plaintiff. Thus, the fact that Kirejczyk was a passenger at the time of the collision does not render the open and obvious doctrine inapposite.

Finally, we need not consider Kirejczyk’s argument that the trial court improperly considered certain photographs and police accident reports because, completely disregarding those items, we still conclude that the trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Hilda R. Gage

³ *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001).

⁴ *Id.*

⁵ *Id.* at 517-518.

⁶ *Lugo, supra* at 516.

⁷ *Id.* at 523.