

STATE OF MICHIGAN  
COURT OF APPEALS

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ELAINE KELBAUGH,

Plaintiff-Appellant,

v

GWINN ACE HARDWARE,

Defendant-Appellee.

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UNPUBLISHED

November 15, 2002

No. 235303

Lapeer Circuit Court

LC No. 99-026641-CH

Before: Griffin, P.J., and Gage and Meter, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff tripped on the end cap of a hardware store aisle, and brought this action alleging that defendant negligently maintained the display counter in a defective and dangerous condition. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10), finding that the danger was open and obvious, and defendant had no duty to protect plaintiff from the hazard.

This Court will review a trial court's ruling on a motion for summary disposition de novo as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.*, 120. Summary disposition should be granted where the proffered evidence fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

A premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). When the dangers are so open and obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). If special aspects of the condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517; 629 NW2d 384 (2001).

Plaintiff has presented no evidence of special aspects of the situation that would make the condition unreasonably dangerous. Defendant could reasonably expect plaintiff to notice the danger, and it had no duty to protect her where there was no unreasonable risk of harm.

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter