

STATE OF MICHIGAN  
COURT OF APPEALS

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RANDY VAVRICK,

Plaintiff-Appellant,

v

BILL'S AUTOMOTIVE and FRANKLIN  
PROPERTIES, LTD.,

Defendants-Appellees.

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UNPUBLISHED

April 17, 2003

No. 238473

Oakland Circuit Court

LC No. 2001-030790-NO

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

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants in this premises liability action. We affirm.

This action arises as a consequence of plaintiff, a business invitee, allegedly sustaining injuries when she tripped and fell due to uneven, cracked, deteriorated pavement in the parking lot of defendant Bill's Automotive repair facility, the premises of which were leased from defendant Franklin Properties. Plaintiff's premises liability action was dismissed by the trial court pursuant to MCR 2.116(C)(10), on the ground that the defects in the parking lot were open and obvious conditions, without special aspects, from which defendants had no duty to protect plaintiff.

On appeal, plaintiff first argues that the trial court erred in dismissing this action because defendants had a duty to maintain its commercial parking lot in reasonably safe repair and, instead, the lot was "in a state of disrepair giving its invitees no other choice but to walk across broken pavement, with cracks, depressions and uneven areas," subjecting invitees to an unreasonable risk of harm. We disagree. This Court reviews the grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A premises owner owes an invitee a duty to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land that the owner knows or should know his invitee will not discover, realize, or protect himself against. *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 532; 542 NW2d 912 (1995). A landowner does not have a duty to warn invitees of open and obvious dangers. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). "Whether a danger is open and obvious depends upon

whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection.” *Id.* However, despite the obviousness of danger, a landowner may still have a duty to protect an invitee against unreasonable risks of harm arising from a special aspect of the condition. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 523-524; 629 NW2d 384 (2001); *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 142-143; 565 NW2d 383 (1997).

Here, plaintiff appears to argue that the defects in the parking lot were so pervasive that they were unavoidable and, therefore, constituted an unreasonable risk of harm. However, if the state of the parking lot was in such disrepair, it was an obvious condition. Contrary to plaintiff’s claim that the condition was unavoidable, plaintiff and other potential patrons could choose not to do business with and, thus, frequent establishments that they consider to pose an unreasonable risk of harm to their welfare. This is simply the harsh reality of our premises liability law as it has evolved. In this case, plaintiff admitted that she saw the defective condition of the concrete and yet chose to traverse the area. Michigan law provides no remedy for the damages that resulted under these circumstances.

Next, plaintiff argues that summary disposition was improper because a genuine issue of material fact existed as to whether the deteriorated condition of the parking lot was open and obvious. We disagree. Plaintiff has repeatedly indicated, in this Court as well as in the trial court, that “[t]he whole lot is deteriorated and covered with cracks, depressions and uneven cement” and has characterized the defective condition as “unavoidable.” The photographs that plaintiff submitted to the trial court appear to support that allegation. See MCR 2.116(C)(10). Consequently, we agree with the trial court’s implicit holding that it was reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. See *Hughes, supra*.

Finally, plaintiff argues that defendants were not entitled to summary disposition because a genuine issue of material fact existed as to whether the unavoidability of the condition presented a special aspect from which defendant had a duty to protect its invitees. We disagree. Generally, a “special aspect” of a condition is one that is unusual in character, location, or surrounding conditions. See *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). However, unless the special aspect gives “rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided,” it falls within the ambit of the open and obvious doctrine. *Lugo, supra* at 519. When considering whether a condition constitutes a special aspect, “it is important to maintain the proper perspective, which is to consider the risk posed by the condition *a priori*, that is, before the incident involved in a particular case.” *Id.* at 518, n 2.

Here, plaintiff analogizes her factual scenario with the *Lugo* Court’s example of a special aspect that involved “a commercial building with only one exit for the general public where the floor is covered with standing water. While the condition is open and obvious, a customer wishing to exit the store must leave the store through the water.” *Id.* at 518. However, plaintiff’s situation was markedly different. The fictitious plaintiff in *Lugo* was *required* to confront an *unexpected* risk because the plaintiff was already in the fictitious defendant’s building and, in order to exit the building, had to walk through the water. Here, plaintiff was not required to confront an unexpected risk; she simply could have refused to patronize a business that shows such disregard for its customers that it “maintains” a parking lot that, in her opinion, is “deteriorated and covered with cracks, depressions and uneven cement.” Accordingly, because

there was no special aspect to the condition of the parking lot that posed an unreasonable risk of harm, the trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Patrick M. Meter  
/s/ Mark J. Cavanagh  
/s/ Jessica R. Cooper