

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

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ERIC STEINER,

Plaintiff-Appellant,

v

CITY SPORTS CENTER, INC.,

Defendant-Appellee.

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UNPUBLISHED

May 24, 2005

No. 252461

Wayne Circuit Court

LC No. 02-242475-NO

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

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

Plaintiff, a coach for his sons' hockey team, was coaching a game at defendant's facility. He was stationed at the end of the players' bench near the gate through which players entered and exited the ice. Plaintiff suffered a knee injury when, as he opened the gate, his right leg was pinned between the bench and the gate and his kneecap was struck by a metal latch on the gate.

Plaintiff filed suit, alleging that defendant failed to inspect its property for dangerous conditions, failed to maintain its property in a reasonably safe condition, and failed to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it had no duty to plaintiff because the condition was open and obvious, and that no special aspects made the condition unreasonably dangerous. The circuit court granted the motion, concluding that defendant owed no duty to plaintiff because the combination of events that resulted in plaintiff's injury was not foreseeable.<sup>1</sup>

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002).

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<sup>1</sup> The issue of duty as framed by the circuit court was not raised by the parties.

A possessor of land has a duty to exercise reasonable care to protect an 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). A landowner is liable for harm caused to an invitee by a condition on the land if the owner knew, or by making an inspection would have known, of the condition, should have expected that the invitee would not discover the condition, and failed to take reasonable care to protect the invitee from the condition. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). However, a landowner has no duty with respect to a danger that is open and obvious. *Bertrand, supra* at 612-613.

Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person of ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Additionally, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp, Inc.*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

We affirm the circuit court's decision on the ground that the condition of which plaintiff complained was open and obvious, and no special aspects made the condition unreasonably dangerous in spite of its open and obvious nature.<sup>2</sup> Plaintiff admitted that the gate and the bench were fully visible as he stood in the area. He acknowledged that nothing prevented him from moving to his left as he opened the gate, and that had he done so, he would not have been injured. The fact that plaintiff did not look at the latch as he opened the gate is irrelevant. *Novotney, supra*. Plaintiff did not produce evidence to create a question of fact as to whether the condition could not have been discovered upon casual observation. No special aspects of the condition made it unreasonably dangerous. *Lugo, supra*. Plaintiff's failure to move to the side as he opened the gate was not a characteristic of the condition itself. It is reasonable to conclude that had plaintiff simply watched what he was doing, he would not have been injured. *Millikin v Walton Manor Mobile Home Park, Inc.*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Summary disposition was correct.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Michael R. Smolenski

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<sup>2</sup> If we conclude that the trial court reached the correct result, we will affirm that decision even we do so under alternative reasoning. *Messenger v Ingham County Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998). Here, we affirm the trial court's decision on the basis of the open and obvious doctrine for the reason that the parties based their arguments on that doctrine.