

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE E. WADDELL,

Plaintiff-Appellant,

V

CLARENCE WASHINGTON,

Defendant-Appellee.

UNPUBLISHED
November 1, 2005

No. 255029
Berrien Circuit Court
LC No. 03-003520-NO

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant, MCR 2.116(C)(10), and dismissing plaintiff's premises liability claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were friends who visited each other's homes with some frequency, and plaintiff went to defendant's home one night in March 2003, to borrow a book. When plaintiff arrived, defendant had not turned on the porch light, it was dark, and the conditions on the ground were starting to get icy as the temperature dropped. Plaintiff slipped and broke his ankle on a patch of ice on defendant's porch when plaintiff attempted to step up onto the porch. Plaintiff brought suit to recover the damages he suffered as a result of the fall. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), on the basis that defendant owed no duty to plaintiff, because the ice upon which plaintiff slipped was an open and obvious danger. Plaintiff's primary contention on appeal is that the trial court committed error requiring reversal when it found that the danger of ice on defendant's porch was open and obvious. We disagree.

To establish a prima facie case of negligence, plaintiff must demonstrate: (1) defendant owed a duty to plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *O'Donnell v Garasic*, 259 Mich App 569, 573; 676 NW2d 213 (2003). Plaintiff was a social guest, and at the time he fell had the status of a licensee on defendant's property. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000); *Taylor v Laban*, 241 Mich App 449, 453; 616 NW2d 229 (2000). Therefore, defendant owed a duty to warn plaintiff of hidden dangers of which defendant knew or had reason to know existed on the property, but did not owe plaintiff a duty to inspect or make the porch safe for plaintiff's visit. *Stitt, supra* 596; *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 65; 680 NW2d 50 (2004).

Defendant had no duty to warn plaintiff of an open and obvious hazard. If the ice on defendant's porch was open and obvious, defendant only owed plaintiff a duty if there were special aspects of the danger making it unreasonably dangerous. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516-519, 525-526; 629 NW2d 384 (2001). A danger is open and obvious if an ordinary user of average intelligence would have recognized the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). Plaintiff's statements admitted that he had seen precipitation and moisture on the ground, and that he was aware that this was turning to ice. Where an average individual of ordinary intelligence knew or should have known of the presence of ice and snow, these conditions have been generally regarded as open and obvious dangers. See *Kenny v Katz Funeral Home, Inc*, 972 Mich 929; 697 NW 2d 526 (2005); *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 330-335; 683 NW2d 573 (2004). Therefore, we believe that the trial court properly found that plaintiff knew or should have known of the danger of ice on defendant's front porch, and that this danger was open and obvious. Thus, summary disposition was appropriate.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder