

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM VAN RIPER,

Plaintiff-Appellee,

v

DISCOUNT TIRE CO, INC, and THE
REINALT-THOMAS CORP, d/b/a DISCOUNT
TIRE CO.,

Defendants-Appellants.

UNPUBLISHED
November 3, 2005

No. 254480
Washtenaw Circuit Court
LC No. 03-000161-NO

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

In this case involving a slip and fall accident, defendants appeal by leave granted an order denying their motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's slip and fall occurred on January 2, 2003, on a sidewalk adjacent to defendants' parking lot. At the time of his fall, plaintiff was attempting to retrieve his vehicle from defendants' possession. Plaintiff was told to look for the vehicle on a nearby street. Plaintiff fell as he walked along the snow-covered sidewalk.

Plaintiff filed suit alleging negligence. The trial court denied defendants' summary disposition, finding that while the dangerous condition involved was open and obvious, it presented "special aspects" that rendered it unreasonably dangerous so as to allow recovery under a negligence theory.

The parties and the trial court relied on matters outside the pleadings; thus, review under 2.116(C)(10) is appropriate. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). "A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Defendants argue that the slippery condition was open and obvious, and that it did not present any "special aspects" that rendered it "unreasonably dangerous" in spite of its open and obvious nature. We agree.

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. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-610; 537 NW2d 185 (1995). However, 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. *Lugo, supra* at 517-518.

Both the open and obvious danger doctrine and the principles concerning special aspects are equally applicable to cases involving the accumulation of snow and ice. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 7-8; 649 NW2d 392 (2002). Whether a condition is open and obvious depends on whether it is reasonable to expect that an average person with 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).

While all accumulations of snow and ice may not be open and obvious, Michigan courts have generally held that the hazards presented by unobstructed ice and snow were open and obvious when the plaintiff knew or had reason to know of the slippery conditions. See *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11, 16; 643 NW2d 212 (2002); *Joyce v Rubin*, 249 Mich App 231, 240; 642 NW2d 360 (2002). Plaintiff admitted that he knew of the slippery conditions presented by the weather at the time he fell. The trial court correctly ruled that reasonable minds could not differ that the slippery condition of the sidewalk was open and obvious. *Novotney, supra*.

We further agree with defendants that the slippery conditions presented no “special aspects” that created “a uniquely high likelihood of harm or severity of harm” *Lugo, supra* at 518-519. This Court has previously held that a layer of snow on a sidewalk did not constitute a unique danger creating a “risk of death or severe injury,” *Joyce, supra* at 243. Likewise, this Court has held that falling down ice-coated stairs does not pose the risk of severe harm such as that contemplated in *Lugo*. *Corey, supra* at 6-7. Ice on a sidewalk in Michigan in January is a common occurrence, not a unique one. *Kenny v Kaatz Funeral Home, Inc*, 472 Mich 929; 697 NW2d 526 (2005).

Furthermore, we reject plaintiff’s argument that the condition was effectively unavoidable. Plaintiff was not effectively forced to leave defendants’ premises without any option but to encounter the danger. Instead, he chose not to wait for his vehicle to be brought to him or to join his wife in her arguably safer attempt to search for his truck.

The dangerous condition here was open and obvious. Ice and snow do not present “a uniquely high likelihood of harm or severity of harm” *Lugo, supra* at 518-519. We hold that the trial court erred when it refused to grant defendants’ motion for summary disposition.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray