

STATE OF MICHIGAN
COURT OF APPEALS

CARL BATH,

Plaintiff-Appellant,

v

BROWNSTOWN SHOPPING PLAZA, LLC,

Defendant-Appellee,

and

ARTISTIC OUTDOOR SERVICES, INC.,

Defendant.

UNPUBLISHED
December 18, 2014

No. 318853
Wayne Circuit Court
LC No. 12-015608-NO

Before: O'CONNELL, P.J., and BORRELLO and GLEICHER, JJ.

PER CURIAM.

The circuit court summarily dismissed Carl Bath's premises liability action against Brownstown Shopping Plaza, L.L.C., concluding that there existed no question of fact that the shopping center had actual or constructive notice of the icy condition that caused Bath's injury. We affirm the summary dismissal, but because the condition was open and obvious.

On January 5, 2010, Bath drove to the Brownstown Shopping Plaza to return movies he had rented from Blockbuster Video. He parked next to the curb and attempted to walk up a blue-painted handicap ramp to Blockbuster's exterior drop box. He slipped on ice on the ramp and broke his ankle. After Bath fell, he noticed the ice on the ground.

Bath testified at his deposition that the temperature was below freezing on the day of his accident. However, he claimed that the roads were clear. He further asserted that there had been no precipitation for at least "a couple days." Bath observed no icicles, ice formations, or mounds of snow in the parking lot. Yet, Bath acknowledged that he noticed before he exited his car that the ramp "appeared to be damp."

With regard to invitees, a landowner owes a duty to use reasonable care to protect invitees from unreasonable risks of harm posed by dangerous conditions on the owner's land. Michigan law provides liability for a breach of this duty of ordinary care when the premises possessor knows or should know of a dangerous

condition on the premises of which the invitee is unaware and fails to fix the defect, guard against the defect, or warn the invitee of the defect.

Perfection is neither practicable nor required by the law, and “[u]nder ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary [conditions] ‘foolproof.’” Thus, an integral component of the duty owed to an invitee considers whether a defect is “open and obvious.” The possessor of land “owes no duty to protect or warn” of dangers that are open and obvious because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection. This is an *objective standard*, calling for an examination of “the objective nature of the condition of the premises at issue.” [*Hoffner v Lanctoe*, 492 Mich 450, 460-461; 821 NW2d 88 (2012) (citations omitted, emphasis in original).]

Our Supreme Court has repeatedly held that Michigan winter weather conditions can render black ice an open and obvious danger. Here, there were such “indicia of a potentially hazardous condition.” See *Cole v Henry Ford Health Sys*, ___ Mich ___; 854 NW2d 717 (Docket No. 149580, entered October 22, 2014); *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934, 935; 782 NW2d 201 (2010). Specifically, Bath knew the temperature was below freezing and he readily observed before his fall that the ground was “damp.” “[I]t is reasonable to expect that an average person with ordinary intelligence,” *Hoffner*, 492 Mich at 461, would know that moisture turns to ice when temperatures are below freezing. The open and obvious nature of the danger negated the shopping center’s duty to warn or protect, leaving no factual question to resolve at trial. Accordingly, the circuit court properly dismissed Bath’s suit under MCR 2.116(C)(10) (failure to create a genuine issue of material fact).

We affirm.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher