

Court of Appeals, State of Michigan

ORDER

Nicole Daniels v Legacy HHH

Docket No. 324178

LC No. 13-011430-NO

Kurtis T. Wilder
Presiding Judge

Kirsten Frank Kelly

Christopher M. Murray
Judges

In lieu of granting the application for leave to appeal, the Court orders, pursuant to MCR 7.205(E)(2), that the September 8, 2014 order of the Wayne Circuit Court denying defendants' motion for summary disposition under MCR 2.116(C)(10) is REVERSED. The duty of a premises owner is not absolute and does not extend to open and obvious dangers. *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88 (2012). An open and obvious danger is one that is known to the invitee or is so obvious that an average user with ordinary intelligence would be able to discover it on casual inspection. *Id.* at 461. In denying the motion for summary disposition, the trial court used a subjective standard when it reasoned that, because hospital invitees may be distracted, they are exempted from the "average user with ordinary intelligence" standard. However, the standard is an objective one and the focus is on the alleged hazard, not the condition of the invitee. *Mann v Shusteric Enterprises, Inc.*, 470 Mich 320, 329; 683 NW2d 573 (2004). Viewing the facts in the light most favorable to plaintiff, the non-moving party, summary disposition is appropriate where the spilled coffee was visible and plaintiff testified that she saw it after she fell. We also reject plaintiff's argument that there were special aspects that rendered the condition unavoidable or that the condition posed an unreasonable risk of severe harm or death. *Lugo v Ameritech Corp Inc*, 464 Mich 512, 517-518; 629 NW2d 384 (2001).

This order is to have immediate effect, MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 24 2015

Date

Chief Clerk