

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

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DANA MYERS,

Plaintiff-Appellant,

v

MCLAREN REGIONAL MEDICAL CENTER,

Defendant-Appellee.

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UNPUBLISHED

March 3, 2000

No. 208264

Genesee Circuit Court

LC No. 96-045388 NO

Before: Kelly, P.J., and Jansen and White, J.J.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this slip-and-fall case. We affirm.

Plaintiff argues that questions of fact remained regarding whether the uneven pavement she tripped over was an open and obvious danger and, even if it was open and obvious, whether it created an unreasonable risk of harm which defendant should have anticipated despite the obviousness of the risk or plaintiff's knowledge of it. We disagree.

We review the circuit court's decision to grant summary disposition de novo. *Terry v Detroit*, 226 Mich App 418, 423; 573 NW2d 348 (1997). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim, and the circuit court must consider the pleadings, affidavits, depositions, and other documentary evidence, in the light most favorable to the nonmoving party. The movant has the initial burden of supporting its position by documentary evidence, "the burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Smith v Globe Life Ins Co* 460 Mich 446, 454-455; 597 NW2d 28 (1999).

Defendant does not dispute on appeal that plaintiff was a business invitee when she fell on the way to the parking lot after visiting a patient at defendant hospital.<sup>1</sup> As such, defendant had a duty to exercise reasonable care to protect plaintiff from an unreasonable risk of harm caused by a dangerous condition of the land. *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997).

A merchant may be held liable for injuries resulting from negligent maintenance of the premises or defects in the physical structure of the building. However . . . this duty is not absolute, and . . . does not extend to conditions from which an unreasonable risk cannot be anticipated or to dangers so obvious and apparent that an invitee may be expected to discover them himself. [*Id.* at 139-140, citing *Williams v Cunningham Drug Stores*, 429 Mich 495, 499-500; 418 NW2d 381 (1988)].

If the danger is open and obvious, the question for the court is “whether the risk of harm remains unreasonable, despite its obviousness or despite the invitee’s knowledge of the danger.” *Singerman, supra* at 142-143.

Plaintiff testified at deposition that had she casually inspected the area, she would have been able to see the uneven pavement and walk around it. Her argument that the condition was not open and obvious thus fails. Although plaintiff argued that it was well after sundown when she fell, and stated in her deposition that the area was dimly lit, she did not establish that poor lighting prevented her from seeing the uneven pavement. Under these circumstances, we conclude that plaintiff did not present sufficient evidence to raise a genuine issue of material fact on the issue whether the pavement posed an unreasonable risk of harm, despite its obviousness. *Bertrand, supra* at 624.

Affirmed.

/s/ Kathleen Jansen

/s/ Helene N. White

<sup>1</sup> The parties cite no Michigan case addressing the status of a person visiting a patient at a hospital, but other jurisdictions have deemed such a visitor a business invitee. See *Wooten v Houston Co Health Care*, 681 So2d 149, 150-151 (Ala, 1996) (citing twenty-one other states for the same proposition); and cases cited in *Anno: Hospital’s liability to visitor injured as a result of condition of exterior walks, steps, or grounds*, 71 ALR 2d 427.