

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE SHAMOKA,

Plaintiff-Appellant,

v

NEIL TOSA and HUDA HANNA,

Defendants-Appellees.

UNPUBLISHED

October 14, 2004

No. 248774

Oakland Circuit Court

LC No. 2002-042325-NO

Before: Cavanagh, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition, pursuant to MCR 2.116(C)(10), in favor of defendants in this premises liability case. We affirm.

On appeal, plaintiff first argues that the summary disposition was improperly granted because the ice hidden underneath the snow covering the walkway was not an open and obvious danger. We disagree. This Court reviews a trial court's grant of summary disposition de novo to determine whether the movant was entitled to judgment as a matter of law. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

It is undisputed that plaintiff, as a social guest, was a licensee on defendants' premises. A landowner "owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved." *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 65; 680 NW2d 50 (2004); see, also, *James v Alberts*, 464 Mich 12, 19; 626 NW2d 158 (2001). A landowner has no duty to safeguard a licensee from an open and obvious danger. *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001).

Here, plaintiff knew or had reason to know of the alleged hidden danger or the risk involved; therefore, defendant had no duty to warn plaintiff about the condition. See *Kosmalski, supra*. Plaintiff's own testimony indicates that, on the date of the incident, he was fully aware of the condition that caused his slip and fall. Plaintiff testified that, as he was leaving defendants' home, he noticed that the weather had changed and that snow had fallen between the time of plaintiff's arrival and the time of his departure. Plaintiff also testified that he recognized the "slippery" condition of defendants' walkway, and that he tried to be careful not to slip by "taking it easy" and walking slowly on the walkway. Moreover, plaintiff's wife and daughters walked in

front of plaintiff and warned him that the footing was slippery. In sum, plaintiff knew or had reason to know of the slippery condition of the walkway, i.e., the allegedly hidden danger, thus a warning was not necessary or warranted and defendant had no duty to provide such warning. Accordingly, we affirm the trial court's dismissal, although we need not consider the application of the open and obvious doctrine. See *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n 10; 443 NW2d 340 (1989) (the trial court reached the right result albeit for the wrong reason).

Nevertheless, if we did consider the application of the open and obvious doctrine, we would agree with the trial court. The slippery walkway posed an open and obvious danger that an average user with ordinary intelligence would have been able to discover upon casual inspection. See *Joyce v Rubin*, 249 Mich App 231, 239; 642 NW2d 360 (2002). Further, there were no special aspects that made the open and obvious risk unreasonably dangerous. See *Lugo v Ameritech*, 464 Mich 512, 517-519; 629 NW2d 384 (2001). The risk associated with walking on the slippery walkway was not unavoidable and did not give rise to a substantial risk of death or severe injury. See *id.* at 518-519.

Affirmed.

/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter