

STATE OF MICHIGAN  
COURT OF APPEALS

---

DIANA PARTIN,

Plaintiff-Appellant,

v

BUSCH'S VALU LAND, a/k/a BUSCH'S INC.,  
and GRUBER INVESTMENT CO., a/k/a  
GRUBER INVESTMENT CO, LLC,

Defendants-Appellees.

---

UNPUBLISHED

March 13, 2007

No. 271885

Monroe Circuit Court

LC No. 05-020259-NO

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's grant of summary disposition to defendants on plaintiff's negligence claim for personal injury. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff injured herself after she slipped and fell on snow covered pavement about two feet from the entrance of defendants' grocery store. Plaintiff sued defendants for her personal injuries based on a premises liability theory. She alleged that defendants were negligent in failing to inspect, to maintain, to correct, to warn, and to protect her, a business invitee, from a dangerous condition, i.e., ice and snow. Plaintiff also alleged that defendants created an intentional public nuisance.

Defendants moved for summary disposition based on the open and obvious doctrine and lack of notice of the dangerous condition. The trial court granted defendants' motion under MCR 2.116(C)(10) based on the open and obvious doctrine, noting that this Court had ruled that, by its very nature, a snow covered surface presents an open and obvious danger. See *Ververis v Hartfield Lanes (On Remand)*, 271 Mich App 61, 67; 718 NW2d 382 (2006). The trial court further ruled that there could be no public nuisance because the situation was not permanent or long lasting.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A prima facie case of negligence requires a plaintiff to show (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached the duty, (3) that the defendant's breach of the duty caused the plaintiff's injuries, and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1,

6; 615 NW2d 17 (2000); *Jones v Enertel, Inc.*, 254 Mich App 432, 436-437; 656 NW2d 870 (2002). In premises liability actions, a plaintiff must also show that the defendant caused the hazard or the defendant had notice or constructive notice of the hazard. *Clark v Kmart Corp.*, 465 Mich 416, 419; 634 NW2d 347 (2001) (citation omitted). Constructive notice arises when a hazard existed for a length of time sufficient to enable a reasonably careful possessor of the premises to discover it. *Id.*

The possessor of premises has a duty to reasonably protect an invitee from an unreasonable risk of harm caused by a known or constructively known dangerous condition on the land. In the absence of special aspects, this duty does not exist if the unreasonable risk of harm cannot be anticipated by the owner of the premises or if the risk is open and obvious. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 609-610; 537 NW2d 185 (1995). In Michigan, the risk of harm presented by snow covered ice is open and obvious where the plaintiff either knew of the accumulated snow and ice or an average person with ordinary intelligence would have been able to discover the condition and appreciate the risk it presented. *Mann v Shusteric Enterprises, Inc.*, 470 Mich 320, 329-330; 683 NW2d 573 (2004); *Joyce v Rubin*, 249 Mich App 231, 238-239; 642 NW2d 360 (2002). Thus, absent special circumstances, the risk of harm posed by snow and ice is open and obvious and does not impose a duty on the premises possessor to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 6, 8; 649 NW2d 392 (2002).

Here, plaintiff testified that she saw the snow between her car and the entrance to defendants' store before she walked over the snow. She even said that she cautiously approached the entrance by taking small steps. When plaintiff left the store she further stated that she walked around the snow covered ice by stepping to the side of it. Under the open and obvious doctrine, defendants had no duty to warn or remove the snow because a person with ordinary intelligence upon casual observation reasonably would have anticipated the potential danger that the snow presented. Further, plaintiff has not shown any special aspects that the risk of harm was unavoidable or that the risk was unreasonably dangerous. The record shows that defendants' store had another entrance and that plaintiff walked around the snow covered area when she returned to her car. Moreover, the risk of harm consisted simply of an ordinary slip-and-fall upon the ground, which is commonly experienced in Michigan. This does not rise to the level of an unreasonably dangerous condition that presents certain and extreme injury. Accordingly, we find that the trial court did not err in granting summary disposition under the open and obvious doctrine.

Plaintiff also argues that defendants had notice of the hazard presented by the snow covered ice because knowledge of the danger should have been imputed to defendants who possessed, maintained, and were present on the premises when the snow fell and the ice formed beneath the snow. Again, we disagree. Initially, we note that this issue is irrelevant because the trial court decided this case under the open and obvious doctrine, not on whether plaintiff failed to show that defendants had actual or constructive knowledge of the ice and snow hazard. Nevertheless, even if the open and obvious doctrine did not apply and if the trial court had decided this issue, plaintiff's argument still lacks merit. The record in this case does not show that defendants knew or constructively knew of the ice and snow danger. Although, as a practical matter, defendants' employees were as aware of the snow fall as plaintiff and even had the parking lot plowed the day of plaintiff's fall, the record does not establish defendants' actual

knowledge about the ice hazard or the relevant weather conditions that would have constructively informed defendants when the ice hazard formed under the snow. Accordingly, even if the open and obvious doctrine did not apply, plaintiff did not establish defendants' actual or constructive notice as part of her prima facie case of premises liability.

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette