

STATE OF MICHIGAN
COURT OF APPEALS

FRANCES J. CAYLOR,

Plaintiff-Appellant,

v

OAKWOOD HOSPITAL CORPORATION,

Defendant-Appellee.

UNPUBLISHED

April 21, 2000

No. 208569

Wayne Circuit Court

LC No. 96-609991-NI

Before: Gribbs, P.J., and Doctoroff and T.L. Ludington*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the opinion and order granting summary disposition to defendant under MCR 2.116(C)(10) in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff tripped and fell on uneven pavement in the parking lot leading to defendant's emergency room entrance. She brought this action alleging that defendant failed to maintain the area in a reasonably safe condition, and failed to warn invitees of the danger. Defendant moved for summary disposition, asserting that any danger was open and obvious. The court granted defendant's motion.

As an invitor, defendant owed a duty to plaintiff to maintain the premises in a reasonably safe condition and to exercise ordinary care to keep the premises safe. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 193; 600 NW2d 129 (1999); *Schuster v Sallay*, 181 Mich App 558; 450 NW2d 81 (1989). Where a condition is open and obvious, there is no duty to warn an invitee of a danger. *Riddle v McLouth Steel Product Corp*, 440 Mich 85; 495 NW2d 676 (1992). However, where a possessor of land should anticipate that an invitee will suffer physical harm from an obvious danger, it is not relieved of its duty to exercise reasonable care towards its invitee. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995). To find that the duty applies, there must be unusual characteristics that make the condition unreasonably dangerous. *Id.*

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff failed to show that the condition was unreasonably dangerous. The only distractions that would have averted her attention were conditions related to an ongoing construction project. As the trial court noted, these conditions should have heightened plaintiff's attention rather than distracted her. Where plaintiff failed to establish a genuine issue of fact regarding the danger, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(10). *Id.*, 621; *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470; 499 NW2d 379 (1993).

Affirmed.

/s/ Roman S. Gribbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington