

STATE OF MICHIGAN  
COURT OF APPEALS

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JANET ANN JAMESON,

Plaintiff-Appellant,

v

HOME DEPOT USA, INC,

Defendant-Appellee.

UNPUBLISHED

September 15, 2005

No. 262744

Grand Traverse Circuit Court

LC No. 04-023959-NO

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Before: Bandstra, P.J., and Neff and Donofrio, JJ.

MEMORANDUM.

Plaintiff appeals by right a grant of summary disposition in defendant's favor. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In this premises liability case, plaintiff was injured when she slipped on loose stones in defendant's parking lot. These decorative stones had been dislodged from their beds in islands in the lot. Plaintiff maintained that she did not see the stones before she fell; however, she stated that she had seen the loose stones many times in previous visits to the store. She had kicked and stepped on them, and did not think they posed a threat to her. She admitted that had she looked down, she would probably have seen the stones.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) on the ground that the danger was open and obvious. The trial court granted the motion, finding that both the stones, and the danger posed by the stones, would have been recognized by a person with ordinary intelligence. We review de novo a trial court's decision on a motion for summary disposition. *Joyce v Rubin*, 249 Mich App 231, 234; 642 NW2d 360 (2002).

Premises owners owe a duty to their invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on their property. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). This duty does not extend to dangerous conditions that are open and obvious, absent "special aspects" that render the condition unreasonably dangerous despite its open and obvious nature. *Id.* at 516-518. A danger is open and obvious when "an average user with ordinary intelligence [would] have been able to discover the danger and the risk presented upon casual inspection." *Joyce, supra* at 238, quoting *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

Plaintiff asserts that, while the condition of the loose stones may have been open and obvious, the danger presented by the stones was not. She claims that there is no evidence that she knew or should have known that placing her foot on the pebbles would be like walking on marbles. We disagree. An average user of ordinary intelligence would know that round stones roll or shift when uneven pressure is applied to them, especially where the stones cannot be shoved into the underlying ground. The fact that plaintiff had not previously fallen does not change the nature of the condition. Plaintiff has not presented any evidence that the stones possessed “special aspects” that rendered them unreasonably dangerous despite their open and obvious nature.

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio