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boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Depression Between Driveway and Grass Was an "Everyday Occurrence" and Was Not a Dangerous Condition

By Todd M. Rowe

In McAulay v. Caruso, unpublished decision of the Michigan Court of Appeals, Plaintiff was attending a barbeque at Defendants' home. Plaintiff was injured when she was chasing her nephew "to steal a kiss" and stepped into a depression where the edge of the driveway met the grass. The trial court granted Defendants' motion for summary disposition finding that no genuine issues of material fact existed regarding whether there was a hidden danger and whether Defendants knew of the hidden danger. The trial court further noted that "a separation between grass and pavement is not uncommon and would not normally be considered a hidden danger."

On appeal, Plaintiff contended the trial court erroneously granted Defendants' motion for summary disposition because the depression near the driveway was a hidden danger. The Court of Appeals noted that "summary disposition is appropriate if the plaintiff [in a premises liability lawsuit] fails to establish a prima facie case of negligence." It is well-settled in Michigan law that a plaintiff is required to "prove a duty owed by the defendant to the plaintiff, a breach of that duty, causation, and damages." In the context of premises liability actions, "[a] landowner's duty to a visitor depends on the visitor's status as a trespasser, licensee or invitee."

In the instant action, there was no dispute that Plaintiff was an invited guest at Defendants' barbeque. Consequently, the trial court correctly found that Plaintiff—as a social guest at Defendants' home — was a licensee. Michigan law "requires that a landowner owes a licensee a duty to warn the licensee of any hidden

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In this case, Defendants were not liable for Plaintiff's claimed injuries because a depression between the pavement and grass next to a driveway was a common condition which did not pose an unreasonable risk of harm. The development of the open and obvious doctrine compels a plaintiff in a premises liability action to first demonstrate that a condition is more than an "everyday occurrence." As this case illustrates, "everyday occurrences" are generally not dangerous conditions which pose an unreasonable risk of harm. A premises owner owes a duty to exercise reasonable care to protect the licensee from an unreasonable risk of harm caused by a dangerous condition on the land. Michigan courts have consistently refused to impose liability for conditions that are common and everyday occurrences. Even though this case involved a social guest, the reasoning of this decision applies equally to situations involving business visitors.

dangers the owner knows or has reason to know of, if the hidden danger poses an unreasonable risk and the licensee does not know or have reason to know of the hidden danger and the risk involved." If Plaintiff had been visiting for some sort of business or economic purpose (even something as benign as babysitting), she would have been an invitee and would have been owed additional duties by Defendant.

The Court of Appeals affirmed the trial court's decision based upon the finding "that there was no genuine issue of material fact regarding whether the condition constituted a hidden danger posing an unreasonable risk of harm in this case." Specifically, a depression on the side of a driveway was found to be an "everyday occurrence" and "is not uncommon and would not normally be considered a hidden danger." Based upon the above, the Court of Appeals reasoned that "[i]f a condition is not dangerous, it is 'senseless' to consider whether it is open and obvious."

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