

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FREDA J. GOLDY,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	DOCKET NO. 15-01334
	:	
WOODLANDS BANK,	:	
	:	
Defendant	:	CIVIL ACTION - LAW
	:	SUMMARY JUDGMENT

**OPINION AND ORDER**

This matter is a slip and fall case involving plaintiff falling on the sidewalk outside defendant bank on September 2, 2014 on West Fourth Street in the City of Williamsport. Before the Court is defendant’s motion for summary judgment under two theories. 1. Plaintiff assumed the risk. 2. Plaintiff cannot state specifically what caused her fall. For the reasons stated below, summary judgment is denied.

In reviewing a motion for summary judgment all doubts as to the existence of a material fact must be resolved against the moving party. Keystone Freight Corp. v. Stricker, 31 A.3d 967, 971 (Pa. Super. 2011). “The assumption of the risk doctrine is a "function of the duty analysis" required in any negligence action[.]” Thompson v. Ginkel, 2014 PA Super 125, 95 A.3d 900, 906 (Pa. Super. 2014). *citing* Carrender v. Fitterer, 503 Pa. 178, 469 A.2d 120, 125 (Pa. 1983). “When an invitee enters business premises, discovers dangerous conditions which are both obvious and avoidable, and nevertheless proceeds voluntarily to encounter them, the doctrine of assumption of risk operates merely as a counterpart to the possessor's lack of duty to protect the invitee from those risks.” Carrender, supra, 469 A.2d at 125. In this case the record reflects that plaintiff saw the defect but does not reflect a subjective appreciation of the danger. In fact, plaintiff had traversed the area periodically, apparently without incident. Plaintiff’s Depo., at 19-21.

This is unlike Carrender, supra, cited by defendant where plaintiff manifested an awareness of the ice and an appreciation of the risk of traversing it. Carrender, supra, at 124.<sup>1</sup> In Pennsylvania a defendant must show that the nature and extent of risk was fully appreciated and that plaintiff voluntarily proceeded to face that risk. Barnes v. American Tobacco Co. 161 F.3d 127 (3<sup>rd</sup> Cir. 1998). While the record certainly points to possible negligence, appreciation of risk is lacking in the present case. Our Supreme Court has recently held that assumption of risk typically remains a jury question unless evidence is so clear to void all issues of fact. Thompson v. Ginkel, 95 A.3d 900 (Pa. Super. 2014). The record presents issues of fact upon which reasonable minds may differ.<sup>2</sup>

Second, defendant contends that summary judgment is warranted because plaintiff cannot say that the sidewalk defect caused her fall. Logical and reasonable inferences as to the cause of a fall are sufficient to raise an issue of material fact and deny summary judgment. *See, e.g.,* Marks v. Tasman, 527 Pa. 132, 137, 589 A.2d 205, 207 (Pa. 1991). In Marks, the plaintiff was an 89 year old, legally blind man who did not see what caused his fall. However, evidence placed his foot near a hole at the time of the fall. This evidence was sufficient to establish that he fell because of the defect in the sidewalk. *See also,* Harris by Harris v. Hanberry, 149 Pa. Commw. 300, 613 A.2d 101 (Pa. Cmwlth. 1992) (“finding that a hole on the defendant's property alleged to have caused a fall presented a material factual question that precluded summary judgment”). This case mirrors those cases in terms of a causation question.

Accordingly, the Court enters the following Order.

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<sup>1</sup> In Carrender, supra, the plaintiff chose to park her car in a spot requiring her to traverse with her prosthesis over smooth ice covering. The rest of the parking lot that was free from ice and snow. Upon exiting her vehicle, plaintiff gripped the adjoining vehicle to negotiate the slippery surface. When she returned, plaintiff again chose to traverse the slippery ice to return to her vehicle when she fell. Plaintiff acknowledged complete awareness of the dangers.

<sup>2</sup> In light of the Court's ruling, the Court need not reach the question of whether an independent duty arose from municipal ordinances or codes.

**ORDER**

AND NOW, this **31<sup>st</sup>** day of **May 2016** it is ORDERED and DIRECTED that Defendant's motion for summary judgment is DENIED.

BY THE COURT,

May 31, 2016  
Date

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Richard A. Gray, J.

cc: Bret Southard, Esq. (for Plaintiff)  
James J. Wilson, Esq. (for Defendant)