

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LIOM OXLEY,

Plaintiff-Appellant,

v

NORTHERN FOOT & ANKLE CENTERS, P.C.,

Defendant-Appellee.

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UNPUBLISHED

October 14, 2021

No. 354911

Iosco Circuit Court

LC No. 19-001786-NI

Before: BECKERING, P.J., and SHAPIRO and SWARTZLE, JJ.

SHAPIRO, J. (*concurring*).

While I agree with the majority’s conclusion that defendant did not have notice of the change in weather conditions that occurred while plaintiff was at the clinic, I disagree with its conclusion that defendant lacked notice of the hazardous condition of the handicap ramp. I also conclude that there is a question of fact as to negligence given that the antislip paint was clearly inadequately maintained, and I reject defendant’s argument based on the open and obvious doctrine.<sup>1</sup>

I must nevertheless concur, however, because plaintiff failed to submit evidence from which the jury could reasonably conclude that his fall was due, at least in part, to the fact that much of the antislip paint on the ramp had peeled away. Plaintiff is correct that photographs demonstrate the absence of paint on large areas of the ramp. But it is also true that the paint had not peeled away on other large areas of the ramp. And in his deposition plaintiff stated that he did not know whether the area where his cane slipped was painted or unpainted, and when asked to mark a

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<sup>1</sup> There are three reasons for this conclusion. First, whether or not paint on a walkway contains antiskid material is not observable on casual inspection. Second, even if it was open and obvious, it was not avoidable. There are only two entrances to the offices, one served by the ramp and another served by a set of stairs that plaintiff testified he could not safely traverse due to his medical condition. Third, defendant has not offered any evidence that the condition of the stairs was any less icy or less dangerous than the condition of the ramp, so there is insufficient evidence of it being a safe alternative.

photograph to show where the cane slipped, he placed the mark on an area of the ramp that remained painted. Given this evidence, and the lack of any contrary evidence, I agree with the majority that plaintiff's claim that the deterioration of the antislip paint was a cause-in-fact of his fall remains speculative.

/s/ Douglas B. Shapiro