

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ROSANNA SMITH,**

**Appellant,**

**v.**

**THE CALLAWAY BANK,**

**Respondent.**

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**DOCKET NUMBER WD73035**

**Date: February 28, 2012**

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Appeal from:  
Callaway County Circuit Court  
The Honorable Gary M. Oxenhandler, Judge

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Appellate Judges:  
Division Four: Lisa White Hardwick, Chief Judge, Presiding, Mark D. Pfeiffer, Judge  
and Anne Mesle, Special Judge

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Attorneys:  
Michael Blum, Columbia, MO, for appellant.  
Thoma M. Ward and Elizabeth S. Silker, St. Louis, MO, for respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

**ROSANNA SMITH**

**Appellant,**

**v.**

**THE CALLAWAY BANK,**

**Respondent.**

WD73035

Callaway County

Before Division Four: Lisa White Hardwick, Chief Judge, Presiding, Mark D. Pfeiffer,  
Judge and Anne Mesle, Special Judge

Rosanna Smith appeals the summary judgment ruling that denied her personal injury claims against the Callaway Bank. While Smith was exiting the Bank and walking toward her car, she stepped on a lava rock scattered on the sidewalk outside of a landscaped area and injured her ankle. She sued the bank asserting claims of *respondeat superior*, negligence, and premises liability. Smith contends the circuit court erred in granting summary judgment in favor of the Bank because there were genuine issues of material fact as to whether the lava rock scattered on the sidewalk was a dangerous condition that was open and obvious.

**REVERSED AND REMANDED.**

Division Four holds: Summary judgment was improper because Smith raised issues of fact regarding the size and noticeability of the lava rock under the circumstances of this case. Although Smith's prior knowledge and awareness of

the lava rocks may be an issue relevant to her comparative fault, it has no bearing on the preliminary question of whether the Bank owed her a duty as an invitee. The summary judgment is reversed, and the cause is remanded for further proceedings.

Opinion by: Lisa White Hardwick, Chief Judge

February 28, 2012

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