# STATE OF MICHIGAN

# COURT OF APPEALS

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DAVID KWIATKOWSKI,

Plaintiff-Appellee,

v

COACHLIGHT ESTATES OF BLISSFIELD, INC., and DANIEL D. RUPP,

Defendants-Appellants.

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UNPUBLISHED
July 3, 2007

No. 272106
Lenawee Circuit Court
LC No. 05-001891-NO

Before: Servitto, P.J., and Jansen and Schuette, JJ.

PER CURIAM.

Defendants appeal, by delayed leave granted, the trial court's denial of their motion for summary disposition. Because plaintiff failed to make out a prima facie case of negligence, we reverse and remand for entry of summary disposition in favor of defendants.

This action arises from plaintiff's fall from a porch when defendant Rupp allegedly opened a door into him. Plaintiff resided at a mobile home park owned/operated by defendant Coachlight Estates of Blissfield, Inc. ("Coachlight"), and managed by defendant Rupp. According to plaintiff, he approached Rupp's mobile home to speak with him and, as he reached the top of the porch stairs, Rupp opened the screen door outward. The door hit plaintiff in the face and chest, causing him to catch his left foot under the door and fall backward, and causing plaintiff to suffer injuries as a result.

Plaintiff filed a complaint against Coachlight on theories of premises liability and breach of statutory duties. The trial court granted defendant's motion for summary disposition, but allowed plaintiff to file an amended complaint to allege general negligence against Coachlight and Rupp. After plaintiff filed his first amended complaint, defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court denied the motion, and we granted leave to appeal.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). In assessing a motion brought under MCR 2.116(C)(8), all factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be

drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

In ruling on a motion for summary disposition under MCR 2.116(C)(10), "a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the non-moving party." *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005). Summary disposition is appropriate under MCR 2.116(C)(10) when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law."

On appeal, defendants contend that there is no genuine issue of material fact concerning whether defendants owed a duty to plaintiff or breached any duty, such that summary disposition in their favor should have been granted. We agree.

To establish a prima facie case of negligence, a plaintiff must show (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached the duty, (3) that the defendant's breach of the duty caused the plaintiff injuries, and (4) that the plaintiff suffered damages. *Teufel v Watkins*, 267 Mich App 425, 427; 705 NW2d 164 (2005). Duty is defined as the legal obligation to conform to a specific standard of conduct so as to protect others from the unreasonable risks of injury. *Burnett v Bruner*, 247 Mich App 365, 368; 636 NW2d 773 (2001). "In deciding whether a duty should be imposed, the court must look at several factors, including the relationship of the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented." *Hakari v Ski Brule Inc*, 230 Mich App 352, 359; 584 NW2d 345 (1998). There can be no actionable negligence if no duty exists. *Id.* The threshold issue of whether a duty exists is determined by the court as a matter of law. *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002).

In the instant matter, plaintiff alleges a duty on defendants' part to open the screen door in a reasonably careful and a cautious manner. As support for his position, plaintiff relies on the common law, which imposes "on every person engaged in the prosecution of any undertaking an obligation to use due care, or to so govern his actions as not to unreasonably endanger the person or property of others." *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967).

Plaintiff has failed to provide legal authority to show that opening a door for another gives rise to a duty of care as contemplated by common law. "In determining whether a duty exists, courts look to different variables, including the (1) foreseeability of the harm, (2) degree of certainty of injury, (3) existence of a relationship between the parties involved, (4) closeness of connection between the conduct and injury, (5) moral blame attached to the conduct, (6) policy of preventing future harm, and (7) the burdens and consequences of imposing a duty and the resulting liability for breach." *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 14; 596 NW2d 620 (1999). Here, while an accident undisputedly occurred, there are no allegations of fact setting forth a prima facie case of negligence on Rupp's part. While plaintiff's injuries are severe and the accident is unfortunate, it is not foreseeable and there is no degree of certainty that the simple act of opening a screen door would cause unreasonable danger to another, even if opened into him. There is also no moral blame to be attached to Rupp's conduct in opening a door, and the connection between the mere act of opening a screen door into someone and the

possibility of an injury to the degree of that suffered in the instant matter is remote. There is simply no fact in this case that would support imposing a duty (or the resulting liability for a breach) on Rupp with respect to his opening the screen door.

Had plaintiff established a common law duty on Rupp's part, there is nevertheless no indication that Rupp failed to use due care in opening the door. Plaintiff presented evidence that Rupp saw him approaching the door and opened the door into him. Accepting plaintiff's allegation that defendant Rupp opened the door into him as true, there is no assertion or evidence that Rupp opened the door more quickly than he should have, or opened the door with more force than necessary.

"The mere occurrence of an accident is not, in and of itself, evidence of negligence." *Clark v Kmart Corp*, 242 Mich App 137, 140; 617 NW2d 729 (2000), rev'd on other grounds 465 Mich 416; 634 NW2d 347 (2001). "Where the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, the plaintiff makes at least a prima facie case." *Clark, supra* at 140-141. If the plaintiff fails to establish a causal link between the accident and any negligence on the part of the defendant, summary disposition under MCR 2.116(C)(10) is appropriate. *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1992). Summary disposition should therefore have been entered in defendants' favor.

Moreover, plaintiff's classification of his claim as negligence rather than premises liability, is questionable. Where an injury arises out of a condition on the land, rather than out of the activity or conduct that created that condition, the action lies in premises liability. See *James v Alberts*, 464 Mich 12, 18-19; 626 NW2d 158 (2001). In this matter, plaintiff was not injured by the door hitting his face and chest. Rather, plaintiff was injured by his fall once he lost his balance on the small porch and when his foot caught under the door. The small porch and the slight gap between the porch and the door are conditions of the land. Thus, plaintiff's claim arguably sounds in premises liability, not general negligence.

Reversed and remanded for entry of summary disposition in favor of defendants. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Bill Schuette