S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

MARYANN JAMES, Plaintiff-Appellant,	UNPUBLISHED July 18, 2006
v SANDYOAK VILLAGE ASSOCIATION, INC, Defendant-Appellee.	No. 267615 Roscommon Circuit Court LC No. 05-725185-NO

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's injuries occurred when she slipped and fell on a floor located in defendant's clubhouse near the laundry room. Plaintiff was a seasonal employee for defendant who performed outside work, but was not working at the time because she had decided to get her laundry done before it stopped raining. When she entered the laundry room she noticed a small wet spot on the floor. She told one of the maintenance workers who was present in the clubhouse about the wet area, and began to do her laundry. After leaving the laundry room to discard a detergent container, she returned and continued to wash her clothes. As she left the room for the second time, she took two steps and slipped.

Plaintiff filed suit alleging negligence. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that the dangerous condition involved was open and obvious. Plaintiff argues that the condition was not open and obvious, and that even if the condition was open and obvious, it presented "special aspects" that rendered it "unreasonably dangerous" in spite of its open and obvious nature. We disagree.

We review de novo a trial court's ruling on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In considering a motion pursuant to MCR 2.116(C)(10), a court considers affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

A landowner has a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, a premises possessor is not generally required to protect an invitee from open and obvious dangers. *Id.* The question of whether a condition is "open and obvious" depends on whether "it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection." *O'Donnell v Garasic*, 259 Mich App 569, 575; 676 NW2d 213 (2003). "Because the test is objective, this Court 'looks not to whether plaintiff should have known that the [condition] was hazardous, but to whether a reasonable person in his position would foresee the danger.'" *Joyce v Rubin*, 249 Mich App 231, 238-239; 642 NW2d 360 (2002), quoting *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 11; 574 NW2d 691 (1997). Only when a condition on the land contains "special aspects" that render it unreasonably dangerous in spite of its open and obvious nature, such as when it presents a "uniquely high likelihood of harm or severity of harm if the risk is not avoided," does a landowner continue to owe a duty to undertake reasonable precautions to protect invitees from that risk. *Lugo*, *supra* at 517-519.

Plaintiff argues that there were genuine issues of fact regarding whether the danger was open and obvious. We disagree.

Assuming that plaintiff's supposition is correct and that the worker to whom plaintiff spoke did mop the area prior to plaintiff's fall, we still find that the danger was open and obvious to a person in plaintiff's position. Plaintiff admitted that she was not watching where she was stepping as she left the room for the second time, and that had she been doing so, she would have observed anything on the floor. While an average person of ordinary intelligence is not required to closely inspect every inch of a surface upon which he or she might step, public policy requires a person to take reasonable care for his or her own safety. *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11, 17; 643 NW2d 212 (2002); *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995).

A reasonable person in plaintiff's position would have been able to discover the danger and the risk presented by the floor in the hallway, if any, on casual inspection, especially where the person had prior notice of the initial wet area on the floor, commented to call attention to it, and knew of the fact that the maintenance worker had a wet mop at the ready. Here, it is reasonable to conclude from plaintiff's testimony that she would not have been injured if she had been watching the area where she was walking. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Plaintiff did not produce sufficient evidence to create an issue of fact regarding whether an average person with ordinary intelligence would have discovered the condition upon casual inspection. *O'Donnell*, *supra* at 575. The circuit court did not err in concluding that the wet floor constituted an open and obvious danger.

Plaintiff also argues that the floor possessed "special aspects" that rendered it unreasonably dangerous despite its open and obvious condition. We disagree.

Summary disposition is improper if a reasonable trier of fact could find that the condition had special aspects that "give rise to a uniquely high likelihood of harm or severity of harm." *Lugo*, *supra* at 517-519. The *Lugo* Court provided examples of a commercial building with only

one public exit where the floor is covered with standing water, and an unguarded thirty-foot-deep pit in the middle of a parking lot. *Id*. at 518. In any particular case the aggregate of factors present should be analyzed to determine if a uniquely high likelihood or potential severity of harm exists. *O'Donnell*, *supra* at 578. One such factor may be that encountering the condition was effectively unavoidable. *Lugo*, *supra* at 518; *O'Donnell*, *supra* at 578.

Here, plaintiff maintains that the slippery area was "effectively unavoidable" because she was leaving the only door out of the laundry room when she fell. However, after comparing the facts here to the example in *Lugo, supra,* and the thrust of its discussion about unreasonably dangerous conditions, we disagree with plaintiff's contention. The danger in the instant case neither meets the test of presenting a "uniquely high likelihood of harm" nor fits within the example provided to illustrate this type of harm. *Lugo*, *supra* at 517-519. The wet residue left on the floor from mopping was transient. Even if a person in plaintiff's position chose not to either call for assistance from the person who had mopped the floor, who was apparently still nearby, the person could wait a few minutes to give the floor a chance to dry. Plaintiff was momentarily inconvenienced rather than effectively trapped. We thus find that plaintiff has failed to present the existence of "special aspects" that created an unreasonable risk of harm.

Affirmed.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra