STATE OF MICHIGAN

COURT OF APPEALS

THOMAS L. NORKOOLI,

Plaintiff-Appellant,

v

UPCAP, INC., a/k/a UPPER PENINSULA COMMISSION ON AREA PROGRESS,

Defendant-Appellee.

UNPUBLISHED
January 19, 1999

No. 207275
Delta Circuit Court
LC No. 96-13022-NO

Before: Saad, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

In this slip-and-fall, negligence action, plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). The trial court determined that defendant owed plaintiff no duty of care with respect to the spiral staircase on which plaintiff fell because any danger associated with it was open and obvious, and the associated danger was not unreasonable. We affirm.

Plaintiff argues that there was a question of fact regarding defendant's duty of care which precludes a grant of summary disposition. Summary disposition under MCR 2.116(C)(10) is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Gibson v Neelis*, 227 Mich App 187, 190; 575 NW2d 313 (1997).

The parties agree that plaintiff was defendant's business invitee. Because of this relationship, defendant had a legal duty in general to exercise reasonable care to protect plaintiff from dangerous conditions in its building. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). However, when a particular condition is "open and obvious," i.e., readily apparent upon casual inspection to the average user of ordinary intelligence, the property owner generally does not owe the invitee this duty of care with regard to that condition. *Novotney v Burger King Corp*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

Plaintiff does not appear to challenge the trial court's finding that the danger associated with the staircase was open and obvious. In the interest of thoroughness, however, we will address this issue.

In general, "the danger of tripping and falling on a step is . . . open and obvious." *Bertrand*, *supra* at 614. Defendant's coworker acknowledged that the stairs were a danger in the building, indicating that she and others in the building would discuss the steps' danger among themselves and emphasize that one should not walk along the inner edge of the staircase because the tread-width was narrower than on the outside edge. Plaintiff himself admitted that he had been aware of the hazard before the accident, and that he knew it was necessary to concentrate when using the stairs. The obviousness of the risk is evident from a photograph, which reveals that the tread-width of each step is narrower on the inner side of the curve. In *Novotney*, *supra* at 476, we relied in part on our inspection of a photograph in determining that a wheelchair ramp presented an open and obvious risk of harm. We noted that ". . . a person can observe in what direction a sidewalk goes, and what incline the sidewalk presents, upon casual inspection." *Id*. at 474. The same reasoning applies to the tread-width of the steps in a spiral staircase (i.e., a person can observe it upon casual inspection), especially when the staircase area is well lit, as it was here. We therefore conclude that any danger associated with the staircase was open and obvious.

Nonetheless, this obviousness does not automatically relieve defendant of its duty to exercise reasonable care. The Michigan Supreme Court stated in *Bertrand*, *supra* at 611, that if a risk of harm remains unreasonable in spite of its obvious nature, the possessor/invitor may be obligated to take steps for invitees' protection. In *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992), the Supreme Court espoused a similar standard: if the invitor anticipates harm regardless of an invitee's knowledge of the danger, the invitor must take precautions to protect the invitee. Our next inquiry, therefore, is whether the danger was unreasonable or whether defendant should have anticipated harm despite the obviousness of the risk. These two standards are essentially the same and can therefore be addressed as one. See *Singerman v Municipal Service Bureau*, 455 Mich 135, 141-143; 565 NW2d 383 (1997).

Michigan law recognizes the general rule that steps and differing floor levels are reasonable "*unless* unique circumstances surrounding the area in issue [make] the situation unreasonably dangerous." *Bertrand*, *supra* at 614 (emphasis in original). There is no evidence of unique circumstances here; plaintiff has not shown that the staircase was anything other than an ordinary spiral staircase. Additionally, in *Hottmann v Hottmann*, 226 Mich App 171, 176; 572 NW2d 259 (1997), we framed the question of reasonableness as follows: whether "the risk of falling is . . . eliminated by awareness of the hazard." In the case at hand, we infer that the risk of falling on the stairs could be avoided by awareness of the hazard, because there is no documentary evidence in the record that anyone else had *ever* fallen on the steps, whether hauling storage boxes or not. Plaintiff's own knowledge of the risk could have helped him avoid an accident. Although he was compelled to carry boxes downstairs out of an obligation to his employer, he was *not* obligated to traverse the inner, more worn edge of the staircase, to haul a large box by himself, or even to use the curved stairs at all. If he had traversed the outer edge of the staircase (where the tread-width was wider and where a handrail existed), carried the box with the help of another person, or used the straight back steps, he might well have avoided this accident. Plaintiff was aware of the risk and could have easily prevented the accident. Therefore, the risk was reasonable. See *Hottmann*, *supra* at 176.

Furthermore, defendant had no cause to anticipate an accident. Prior to his fall, plaintiff had walked up and down the staircase over 4,000 times without falling. He had hauled several storage boxes down the steps three or four times per year during at least four years of working in the building, without a fall. Defendant's executive director and assistant executive director, both longtime employees of defendant, averred that there had been no prior reports of anyone falling on the circular steps. The fact that no one had ever fallen on the staircase prior to plaintiff's accident is evidence that defendant had no cause to anticipate such falls. Furthermore, defendant could not have reasonably anticipated that an invitee, despite knowledge of the stairs' danger, would attempt to single-handedly haul a large, vision-obstructing box down the narrow edge of the staircase.

There is no question of fact that the stairs' open and obvious risk of harm was not unreasonable and that defendant had no reason to anticipate any harm from its tenants' use of the stairs. The trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Henry William Saad
/s/ Harold Hood
/s/ Roman S. Gribbs