STATE OF MICHIGAN

COURT OF APPEALS

ANGELINE COLOMBO,

Plaintiff-Appellant,

v

FRASER ICE ARENAS, INC., and FRASER INVESTMENT GROUP,

Defendants-Appellees.

UNPUBLISHED
May 4, 2001

No. 214579
Macomb Circuit Court
LC No. 97-003681-NO

Before: Zahra, P.J., and Hood and McDonald, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition in this premises liability action. We reverse.

We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). All reasonable inferences are resolved in the nonmoving party's favor. *Hampton v Waste Mgt of MI, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

Here, plaintiff alleges that she fell when she attempted to descend two steps at defendants' ice arena. Plaintiff acknowledges that she saw the steps, but claims she did not notice the height discrepancy between the first and second steps until after she fell. Plaintiff asserts that she negotiated the first four-and-one-half-inch step without difficulty, but fell while attempting to descend the second eleven-inch step down to ground level. Plaintiff suffered injury to her hip.

Possessors of land owe a legal duty to protect their invitees. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, and only if, all of the following are true: the possessor (a) knows or by the exercise of reasonable care would discover the

condition, and should realize that it involves an unreasonable risk of harm to such invitees; (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect them against the danger. *Id*. If a particular condition creates a risk of harm only because the invitee does not discover the condition or realize its danger, then the open and obvious doctrine will cut off liability if the invitee should have discovered the condition and realized its danger. *Id*. at 611. However, if the risk of harm remains unreasonable despite its obviousness or knowledge of it by the invitee, then the invitor may be required to undertake reasonable precautions. Such an issue is one for the jury. *Id*.

In *Bertrand*, our Supreme Court reasoned that because steps are the type of everyday occurrence that people encounter, they ordinarily do not present an unreasonable risk of harm. *Id*. at 616. Significantly, however, the Court held:

> where there is something unusual about the steps, because of their "character, location, or surrounding conditions," then the duty of the possessor of the land to exercise reasonable care remains. If the proofs create a question of fact that the risk of harm was unreasonable, the existence of duty as well as breach become questions for the jury to decide. [*Id*. at 617 (footnotes omitted), quoting *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 500; 418 NW2d 381 (1988).]

In the present case, the steps were unusual in that they significantly differed in height. The difference in height between the first and second step is alleged to have been six and one-half inches. The tops of the steps were painted the same color red. The steps led to the arena's only functional exit and were not equipped with handrails. Given the unusual character of the steps, we hold that there is a question of fact regarding whether the risk of harm presented by the steps was unreasonable. Accordingly, the existence of duty as well as breach are questions for the jury to decide. *Bertrand, supra*.[1]

Reversed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ Gary R. McDonald

[1] The fact that plaintiff appears to have traversed the steps on her way into the arena does not change our result. The risk of harm to plaintiff when she approached and viewed the steps from above sometime later existed despite any prior experience ascending the steps.