

STATE OF MICHIGAN
COURT OF APPEALS

HENRY GIRARD,

Plaintiff-Appellant/Cross-Appellee,

v

DEARBORN CINEMAS, d/b/a NATIONAL
AMUSEMENTS, INC.,

Defendant-Appellee/Cross-
Appellant,

and

STERLING HEATING & COOLING,

Defendant-Appellee.

UNPUBLISHED

May 18, 2001

No. 219871

Wayne Circuit Court

LC No. 98-808995-NO

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to both defendants. Defendant Dearborn Cinemas cross-appeals from the trial court's order denying its previous motion for summary disposition. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff worked as a roofer for a company hired to perform roofing work at defendant Dearborn Cinemas' establishment. While working on the premises, plaintiff and his co-workers used an extension ladder left on defendant's roof by an unknown party.¹ The safety latches that held the ladder in an extended position had been removed, and in their place a piece of rope had been tied to two rungs. Although plaintiff and others used the ladder for several days without

¹ Plaintiff initially brought suit against defendant Dearborn Cinemas, alleging a premises liability claim. Plaintiff later filed an amended complaint adding defendant Sterling as a party, alleging a negligence claim. The trial court granted summary disposition in favor of both defendants. Because defendant's argument on appeal relates mainly to his premises liability claim, we will refer to Dearborn Cinemas as defendant.

incident, the rope broke while plaintiff was on the ladder. Accordingly, the ladder retracted and plaintiff fell, sustaining personal injuries.

Plaintiff filed suit, alleging that defendant breached its duty to exercise reasonable care for his safety and failed to provide him with a safe ladder. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it owed no duty to plaintiff because any defect in the ladder was open and obvious and because plaintiff was a sophisticated user of ladders. The trial court granted the motion, finding that the undisputed evidence showed that plaintiff was aware of the condition of the ladder and was aware that the ladder would retract if the rope broke. The trial court dismissed all claims against both defendants.

We review a trial court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). To establish a *prima facie* negligence claim, a plaintiff must prove that: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached the duty; (3) the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). A possessor of land does not owe a duty to his invitees to protect them from "dangers that are so obvious and apparent that an invitee may be expected to discover them himself." *Riddle v McLouth Steel Products*, 440 Mich 85, 94; 485 NW2d 676 (1992). Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and the risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). The open and obvious danger doctrine applies both to claims that a defendant failed to warn of the existence of a dangerous condition and to claims that a defendant breached a duty by allowing a dangerous condition to exist on its premises. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 495; 595 NW2d 152 (1999).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. Plaintiff relies on this Court's decision in *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261; 532 NW2d 882 (1995). Plaintiff claims that *Eason* is "virtually identical" to the present case and that *Eason* mandates the conclusion that defendant breached a duty to plaintiff, as a matter of law. Plaintiff's reliance on *Eason* is misplaced. In that case, the plaintiff agreed to assist the defendant in the repair and maintenance of its building. *Id.* at 262. While making repairs, the plaintiff fell from an extension ladder set up by the defendant's agents. *Id.* The plaintiff filed suit, alleging that a safety latch was missing from the extension ladder and that the defendant should have expected that the plaintiff would not discover the dangerous condition. *Id.* at 262-263. This Court reversed the trial court's grant of summary disposition, holding that the danger was not open and obvious:

The danger that an extension ladder might slip and telescope down because of inadequate bracing at its base . . . is a danger readily apparent to persons of ordinary intelligence and experience. However, the fact that a safety latch is

missing or malfunctioning creates a different, or at least an additional, danger that is not so obvious *absent specific knowledge of the defect*. [*Id.* at 265 (emphasis added).]

In the present case, plaintiff admitted that he had specific knowledge of the ladder's defective condition. Plaintiff noticed that the safety latches were missing from the extension ladder and noticed that the latches had been replaced with pieces of rope. Plaintiff also admitted that he was aware that the ladder would retract if the rope broke. Because plaintiff had specific knowledge of the defect, *Eason* is easily distinguishable. We conclude that the danger presented by the ladder was open and obvious to plaintiff. The trial court properly granted summary disposition to both defendants.²

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly

² Our decision upholding the trial court's grant of summary disposition renders defendant's cross-appeal moot. Therefore, we need not address the issues raised on cross-appeal.