STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA CARR-ASTORGA,

Plaintiff-Appellant,

v

JOHN NORTON,

Defendant-Appellee.

UNPUBLISHED
July 24, 2001

No. 221952
Arenac Circuit Court
LC No. 98-006009-NO

Before: Neff, P.J., and O'Connell and R. J. Danhof*, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10), on the basis of the open and obvious danger doctrine. We affirm.

Plaintiff, while a guest at defendant's cottage, went to the basement to do some laundry. She was able to see well enough to negotiate the uncovered, wooden stairs successfully, without the aid of artificial lighting. As plaintiff prepared to leave the basement, she decided to bring a forty-to-fifty pound table upstairs. She carried the table up the stairs in a manner that blocked her view on the left side of her body. As plaintiff neared the top of the stairs, she stepped on an object with her left foot, causing her to fall down the stairs. After she fell, plaintiff noticed a nine-inch, silver wrench on the floor that was not there when she began to climb the stairs.

Plaintiff commenced this action, alleging that defendant was negligent because he knew or should have known of the danger of the wrench on the stairs and failed to warn her of the condition or make the condition safe. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that he owed no duty to plaintiff because the condition was open and obvious. The trial court granted defendant's motion.

We review a trial court's decision on a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Romska v Opper*, 234 Mich App 512, 515; 594 NW2d 853 (1999). The trial court must consider the evidence submitted in the light most favorable to the nonmoving party and determine whether there is a

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

genuine issue of material fact. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). This Court is liberal in finding a genuine issue of material fact. *Marlo Beauty Supply, Inc v Farmers Ins Group*, 227 Mich App 309, 320; 575 NW2d 324 (1998).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed the plaintiff a duty; (2) that the defendant breached that duty; (3) that the defendant's breach proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A social guest is a licensee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). The possessor of land is liable for harm caused to a licensee by a condition on the premises if: (1) the possessor knew or should have known of the condition, knew or should have known that the condition posed an unreasonable risk of harm, and knew or should have known that the licensee would not discover the danger; (2) the possessor failed to exercise reasonable care to make the condition safe or to warn the licensee; and (3) the licensee did not know or have reason to know of the condition. *D'Ambrosio v McCready*, 225 Mich App 90, 93; 570 NW2d 797 (1997). However, a possessor of land has no duty to warn or take any steps to safeguard licensees from conditions that are open and obvious, because such dangers come with their own warning. *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001). 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 upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

In the case at bar, plaintiff testified that, had she been looking at the steps, she would have been able to see anything noticeable that had been placed on them. She further testified that the nine-inch, silver wrench was obvious on the floor. The fact that she did not see the wrench because her view was blocked is immaterial because the pertinent question is whether the condition could have been discovered on casual inspection. *Id*. In light of plaintiff's deposition testimony, the trial court properly concluded that a genuine issue of material fact did not exist regarding whether an average person with ordinary intelligence would have discovered the condition upon casual inspection. Accordingly, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert J. Danhof