STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA MEREDITH and DONALD MEREDITH,

Plaintiffs-Appellants,

v

SOMERSET COLLECTION, GP, INC., SOMERSET COLLECTION LIMITED PARTNERSHIP, SAMUEL FRANKEL, SIDNEY FORBES, NATHAN FORBES, and STANLEY FRANKEL d/b/a FRANKEL/FORBES/COHN ASSOCIATES,

Defendants-Appellees.

UNPUBLISHED
April 12, 2002

No. 228740
Oakland Circuit Court
LC No. 99-016902-NO

Before: K. F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs brought this action to recover for injuries suffered by plaintiff Patricia Meredith (plaintiff) when she walked into a raised platform and fell to the floor while visiting Somerset Collection, which is owned by defendants. Plaintiff was walking through a crowded common area of the mall when she struck the platform at shin level. She did not see the platform. Defendants moved for summary disposition, arguing that the platform was an open and obvious condition. The trial court granted defendants' motion.

Plaintiffs argue that the trial court erred in granting defendants' motion. They argue that there exists a genuine issue of material fact regarding whether the condition was open and obvious and whether it was an unreasonably dangerous condition. We disagree.

A decision on a motion for summary disposition is reviewed de novo. *Oade v Jackson Nat'l Life Ins Co*, 465 Mich 244, 251; 632 NW2d 126 (2001). A motion brought pursuant to MCR 2.116(C)(10) (no genuine issue of material fact) tests the factual support for a claim. *Id*. To rule on the motion, the trial court must consider the pleadings, affidavits, depositions and all other documentary evidence submitted by the parties. MCR 2.116(G)(5); *Singerman v*

Municipal Serv Bureau, Inc, 455 Mich 135, 139; 565 NW2d 383 (1997). The court must view the evidence and all reasonable inferences drawn from the evidence in favor of the nonmoving party, giving the nonmoving party the benefit of any reasonable doubt. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). The reviewing court must "determine whether any genuine issue of material fact exists in order to prevent entering a judgment for the moving party as a matter of law." *Id*.

An invitor has a duty "'to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land' that the landowner knows or should know the invitees will not discover, realize or protect themselves against." *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995), quoting *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). If a condition is open and obvious, the invitor generally has no duty to warn an invitee of the condition. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). The question whether a condition is open and obvious depends on whether it is reasonable to expect an average person of ordinary intelligence to discover the dangerous condition upon casual inspection. *Id*.

It is clear that the condition presented in this case, the raised platform, was open and obvious. It is reasonable to expect that a person of ordinary intelligence would have discovered the condition upon casual inspection, as many persons did in this case. Plaintiff testified that the mall was very crowded, and the evidence indicates that many people negotiated themselves around the platform without incident.

In addition, we find nothing about the character, location or surrounding conditions that makes the platform unusual. See *Bertrand*, *supra* at 616-617. There were no special aspects of this condition that made it so unreasonably dangerous so as to avoid application of the open and obvious danger doctrine. See *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 519; 629 NW2d 384 (2001).

There is no genuine issue of material fact. The platform created a risk of harm only because plaintiff did not discover it. Thus, because plaintiff should have discovered the condition and realized its danger, defendants are not liable. See *Bertrand*, *supra* at 611.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh