STATE OF MICHIGAN

COURT OF APPEALS

ERENSTINA M. BORRELLI,

Plaintiff-Appellant,

v

GENERAL GROWTH PROPERTIES, INC., BIRCHWOOD MALL ASSOCIATES, and BIRCHWOOD MALL PARTNERS, L.L.C.,

Defendants-Appellees.

UNPUBLISHED
August 16, 2002

No. 232378
St. Clair Circuit Court
LC No. 99-001278-NO

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting the motion for summary disposition filed by defendants General Growth Properties, Inc., and Birchwood Mall Partners, LLC.[1] We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a high school teacher, accompanied a group of students on a field trip. The group stopped at Birchwood Mall to eat. Rain had been falling, and the sidewalk outside the entrance was wet. The entrance consisted of two sets of doors separated by a vestibule. An inlaid carpet covered a portion of the vestibule; however, tile was laid just inside the doors. Plaintiff opened an entrance door, slipped on wet tile, and sustained injuries.

Plaintiff filed suit alleging that defendants negligently failed to maintain the premises in a safe condition and to warn of the dangerous and unsafe condition. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff could not establish a prima facie case of negligence, and that they had no duty to warn plaintiff of the condition of the vestibule because the condition was open and obvious. The trial court granted the motion, finding that an issue of fact did not exist as to whether the condition was open and obvious.

[1] Defendant Birchwood Mall Associates was dismissed pursuant to stipulation prior to the filing of the motion for summary disposition.

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 case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty 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 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. A possessor of land may be held liable for injuries resulting from negligent maintenance of the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

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). If special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from the risk. If special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Plaintiff argues the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. The tile on which plaintiff slipped was located just inside the entrance doors, and was not obstructed from the view of a person entering the mall. In her deposition, plaintiff admitted she was not watching where she was stepping when she went through the doors. The fact that plaintiff claims she did not notice the wet floor is irrelevant. *Novotney*, *supra*, 477. It is reasonable to conclude that plaintiff would not have been injured had she been watching the area in which she was walking. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Plaintiff did not come forward with sufficient evidence to create a question of fact as to whether an average person with ordinary intelligence could not have discovered the wet tile upon casual inspection. The trial court did not err in concluding the condition constituted an open and obvious danger.

Furthermore, we find plaintiff's argument that even if the condition was open and obvious it still presented an unreasonable risk of harm is without merit. Plaintiff failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. *Lugo*, *supra*. Had plaintiff simply watched her step, any risk of harm would have been obviated. *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997). Summary disposition was proper.

Affirmed.

/s/ Helene N. White
/s/ Janet T. Neff
/s/ Kathleen Jansen