STATE OF MICHIGAN

COURT OF APPEALS

DR. J. GWENDOLYN GORDON,

Plaintiff-Appellant,

v

SAM'S WHOLESALE CLUB, d/b/a WAL-MART STORES, INC.,

Defendant-Appellee.

UNPUBLISHED
September 21, 2004

No. 247696
Oakland Circuit Court
LC No. 2002-037942-NO

Before: Borrello, P.J., and Murray and Fort Hood

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained injuries when she tripped on or near a mat in the vestibule of the entrance to defendant's store. She fell as she was moving to her right after reading a sign that instructed customers to use the doors on the right. Plaintiff filed suit alleging that she was on defendant's premises as a business invitee, and that defendant negligently failed to maintain the premises in a safe condition and to warn of the unsafe condition. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), concluding that the mat was open and obvious and that no special aspects made it unreasonably dangerous. The trial court also found that plaintiff could not establish proximate cause for the reason that she could only speculate that the mat caused her fall.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

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).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. 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 that risk. If such 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).

The mat on which plaintiff assumed she slipped was located in the vestibule of defendant's store, and was not obstructed from the view of a person entering the store. In her deposition, plaintiff admitted that she had no difficulty seeing in the vestibule, and that she was aware of the presence of the mat. The fact that plaintiff did not look directly at the mat prior to her fall is irrelevant. *Novotney*, *supra* at 477. It is reasonable to conclude that plaintiff would not have been injured had she been watching the area in which she was walking, notwithstanding the fact that she was required to read a sign in order to determine which door she should use. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). The report from plaintiff's safety expert did not create a genuine issue of material fact in light of plaintiff's admission that she was aware of the presence of the mat prior to her fall. The evidence did not create an issue of fact as to whether an average person with ordinary intelligence would have discovered the condition upon casual inspection. The trial court did not err in concluding that the mat was open and obvious.

Plaintiff admitted that she was aware of the presence of the mat, notwithstanding the fact that it was not attached to the floor and was similar in color to the floor. Had plaintiff simply looked at the mat prior to stepping in that direction, any risk of harm would have been obviated. *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997). No special aspects of the mat made it unreasonably dangerous in spite of its open and obvious nature. *Lugo*, *supra*.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood