# STATE OF MICHIGAN

# COURT OF APPEALS

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NANCY MITCHELL,

Plaintiff-Appellant,

v

BLACK LAW OFFICE, PLC, d/b/a BLACK, BLACK & BLACK,

Defendant-Appellee.

UNPUBLISHED
October 26, 2004

No. 248442
St. Clair Circuit Court
LC No. 01-002122-NO

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Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from 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 fell while descending the front staircase of defendant's building after stepping to the side of some books that were stacked on the bottom step. In her complaint, she alleged that defendant negligently failed to maintain the premises in a reasonably safe condition by failing to remove the books and failing to install a second handrail in compliance with the applicable building code.

The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), concluding that the condition of the staircase was open and obvious and that no special aspects made the condition unreasonably dangerous in spite of its open and obvious nature. We review de novo a trial court's decision on a motion for summary disposition. *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. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). 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.

*Id*. 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. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517-519; 629 NW2d 384 (2001). If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Id*.

We hold that the trial court did not err in granting summary disposition to defendant. Steps are encountered as an everyday occurrence. A reasonably prudent person will watch where she is going and will take appropriate steps for her own safety. *Bertrand*, *supra* at 616. The staircase on which plaintiff slipped was well lit, and plaintiff acknowledged that she saw the books before she reached the bottom step. The trial court correctly found that reasonable minds could not differ on whether the condition of the staircase was open and obvious. *Novotney*, *supra* at 474-475.

The open and obvious danger doctrine cannot be relied upon to avoid a specific statutory duty. *Jones v Enertel, Inc*, 467 Mich 266, 267; 650 NW2d 334 (2002); *O'Donnell v Garasic*, 259 Mich App 569, 581; 676 NW2d 213 (2003). Although plaintiff's complaint alleged that defendant failed to maintain the premises in compliance with the building code, not every building code violation supports a special aspects analysis in avoidance of the open and obvious danger doctrine. The issue is whether something unusual about the steps because of their character, location, or condition gave rise to an unreasonable risk of harm. *Bertrand*, *supra* at 617. Plaintiff acknowledged that she did not know what caused her to fall from the staircase. She did not present evidence to establish why the accident occurred as it did. Such evidence must be presented to make out a prima facie case of negligence. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994); *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977). The mere possibility that a breach of the building code by defendant caused plaintiff to sustain injuries is not sufficient to establish causation. *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

Further, defendant's building had a second staircase available for use, meaning that the open and obvious condition on the staircase plaintiff used was not unavoidable. *Lugo*, *supra* at 518. Moreover, no evidence showed that the condition of the staircase that plaintiff descended was otherwise so unreasonably dangerous that it created a risk of death or severe injury. *Id*. Plaintiff failed to demonstrate the existence of any special aspect that made the condition of the staircase unreasonably dangerous in spite of its open and obvious nature. *Id*. at 517-519.

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra