STATE OF MICHIGAN

COURT OF APPEALS

REYNALDO SALINAS, JR.,

Plaintiff-Appellant,

v

OMAR'S MEXICAN RESTAURANT, INC., d/b/a ARMANDO'S MEXICAN RESTAURANT, INC.,

Defendant-Appellee.

UNPUBLISHED
December 20, 2005

No. 263845
Wayne Circuit Court
LC No. 04-410101-NO

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals the trial court's order that granted defendant's motion for summary disposition and we affirm.[1]

I

At approximately 12:20 a.m. on March 29, 2003, plaintiff entered defendant's restaurant through the door commonly used by take out patrons. That entrance has one concrete step outside the door. As plaintiff exited, he attempted to avoid three patrons, but tripped off the step and fell to the ground, wherein he allegedly sustained a serious injury to his ankle.

In his complaint, plaintiff claimed that defendant failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. In its motion for summary disposition, defendant averred that it owed no duty to plaintiff because the alleged unsafe condition is open and obvious, and that no special aspects make it unreasonably dangerous. Finding that no evidence created a question of fact as to whether the condition was open and obvious, or whether special aspects made the condition unreasonably dangerous, the trial court granted defendant's motion for summary disposition.

[1] This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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).

II

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. The duty to protect an invitee does not extend to 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).

If the alleged unsafe condition is an open and obvious danger, then the landowner owes no duty to plaintiff. *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). However, if special aspects make even an open and obvious risk unreasonably dangerous, then 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*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Steps are encountered as an everyday occurrence. A reasonably prudent person is obliged to watch where he is going and the law requires that he use reasonable caution for his own safety. *Bertrand*, *supra* at 616. Importantly, plaintiff acknowledged that he had used the door on previous occasions, and that he traversed the step and entered the door without incident minutes before the accident occurred. Moreover, and significantly, plaintiff acknowledged that he was distracted by other patrons, and simply forgot that a step existed. The fact that plaintiff did not notice the step immediately prior to the accident is irrelevant. *Novotney*, *supra* at 477. The trial court correctly found that reasonable minds could not differ on whether the condition of the step was open and obvious.

The open and obvious danger doctrine cannot be relied upon to avoid a specific statutory duty. *O'Donnell v Garasic*, 259 Mich App 569, 581; 676 NW2d 213 (2003). However, plaintiff's complaint did not allege that defendant breached a specific statutory duty. Rather, the complaint alleged that defendant failed to maintain the premises in compliance with the building code. While the violation of a building code can be some evidence of negligence, *id*. at 578, 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 step because of its character, location, or condition gives rise to an unreasonable risk of harm. *Bertrand*, *supra* at 617. A central point of plaintiff's argument is that the door was effectively unavoidable. However, it was undisputed that the restaurant had a second door that plaintiff could have used. Moreover, no evidence showed that the condition was so unreasonably dangerous that it created a risk of death or severe injury. Cf. *Lugo*, *supra* at 518. Plaintiff acknowledged that the accident

occurred because he simply forgot that the step existed. He failed to demonstrate the existence of any special aspect that made the condition of the step unreasonably dangerous in spite of its open and obvious nature. *Id*. at 517-519. Accordingly, the trial court properly granted summary disposition.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood