STATE OF MICHIGAN

COURT OF APPEALS

MAVIS MILLER,

Plaintiff-Appellant,

v

BASS PRO SHOP OUTDOOR WORLD,

Defendant-Appellee.

UNPUBLISHED
December 29, 2005

No. 263364
Oakland Circuit Court
LC No. 04-058192-NO

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

Plaintiff Mavis Miller appeals as of right the trial court's order granting defendant Bass Shop Outdoor World's motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm.

I. Factual Background

Plaintiff was injured while visiting defendant's store in Great Lakes Crossing Mall with her husband. Plaintiff testified at her deposition that she had been to the store on five or six prior occasions. On the day of her accident, plaintiff and her husband had been shopping for approximately an hour and a half. After making their selections, the couple proceeded along the main aisle toward the front check-out area. The store's main aisle is wide, and on the day of plaintiff's accident, there were display tables and signs erected along the path. As plaintiff walked, she tripped and fell over the base of a display sign. The sign consisted of a large advertising placard secured to a heavy rectangular base. The placard was very large, at eye level, and clearly visible to those walking past. From the photographs in the record, it appears that the color of the sign's base sharply contrasted with the store's floor. In fact, plaintiff's husband testified that he saw the sign and veered to walk around it. Plaintiff alleged that she did not see the sign, as she was "distracted" by the store's display of taxidermy mounts.

II. Open and Obvious Doctrine

Plaintiff challenges the trial court's dismissal of her claim prior to trial. Plaintiff concedes that the sign was an open and obvious condition. However, plaintiff contends that the distraction created by defendant's taxidermy mounts was a special aspect that rendered the aisle unreasonably dangerous. In the alternative, plaintiff contends that a "distracted customer" poses a separate and distinct exception to the open and obvious doctrine. We disagree.

We review a trial court's determination regarding a motion for summary disposition de novo.[1] A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim.[2] "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in [the] light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists."[3] Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.[4]

"In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land."[5] However, "a premises possessor is not required to protect an invitee from open and obvious dangers,"[6] unless the premises possessor should anticipate the harm despite the obvious nature of the condition.[7] If there are "special aspects" that make "even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk."[8] Special aspects exist when a danger, "although open and obvious, is unavoidable or imposes a 'uniquely high likelihood of harm or severity of harm.'"[9]

There is no question that the sign upon which plaintiff tripped was open and obvious. From our inspection at oral argument, it is clear that the sign is similar to many signs found in retail stores. The display placard is very large and at eye level and the sign's base is clearly visible. Plaintiff contends in her brief on appeal that she was unable to see the sign as the main aisle was congested by other shoppers. However, plaintiff conceded during her deposition that she would have seen the sign had she looked forward as she walked. Plaintiff further conceded that the aisle was wide enough to walk around the sign.

We reject plaintiff's contention that the "distraction" created by the taxidermy mounts was a "special aspect" making the store's aisle unreasonably dangerous. When determining whether special aspects render an open and obvious condition unreasonably dangerous, "a court must 'focus on the objective nature of the condition of the premises at issue, not on the

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[1] *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

[2] *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

[3] *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

[4] *MacDonald, supra* at 332.

[5] *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001), citing *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

[6] *Id.* at 517.

[7] *Bertrand, supra* at 610.

[8] *Lugo, supra* at 517.

[9] *Bragan v Symanzik*, 263 Mich App 324, 331-332; 687 NW2d 881 (2004), quoting *Lugo, supra* at 518-519.

subjective degree of care used by the plaintiff' or other idiosyncratic factors related to the particular plaintiff."[10] Store display signs are "an 'everyday occurrence' that ordinarily should be observed by a reasonably prudent person."[11] When you consider the huge debate that exists in the jurisprudence of this state over what constitutes open and obvious and the subtleties that the Supreme Court defines as fitting within that rule, this case appears to be at the opposite end of the spectrum. Plaintiff presented no evidence that the sign or aisle were objectively dangerous. Accordingly, the trial court properly determined that plaintiff failed to create a question of fact that the condition in defendant's store was unreasonably dangerous.

We further reject plaintiff's contention that there presently exists a "distracted customer" exception to the open and obvious doctrine. The Michigan Supreme Court held in *Lugo v Ameritech Corp* that the special aspects analysis is the sole exception to the open and obvious doctrine.[12] Therefore, the trial court properly rejected plaintiff's argument.

Affirmed.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald
/s/ Jessica R. Cooper

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[10] *Id.* at 332, quoting *Lugo*, *supra* at 523-524.

[11] *Lugo*, *supra* at 522-523 (potholes are an everyday occurrence), quoting *Bertrand*, *supra* at 616-617 (steps are an everyday occurrence).

[12] *Id.* at 519.