

STATE OF MICHIGAN  
COURT OF APPEALS

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ANDREA COOPER,

Plaintiff-Appellee,

v

MGM GRAND DETROIT L.L.C.,

Defendant-Appellant.

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UNPUBLISHED  
September 9, 2008

No. 278320  
Wayne Circuit Court  
LC No. 06-608514-NO

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

MEMORANDUM.

Defendant appeals by leave granted from an order denying its motion for summary disposition. We reverse.

After spending a few hours in defendant casino, plaintiff proceeded to exit through the same door that she entered. Plaintiff tripped and fell as she exited the premises. Although she could not identify the cause of her trip and fall, plaintiff testified that patrons opined that the floor mat was the cause of her fall. Defendant moved for summary disposition of plaintiff's complaint by asserting that the condition was open and obvious. Plaintiff asserted that there were factual issues surrounding the condition and movement of the mat that precluded summary disposition. The trial court questioned plaintiff's ability to meet the burden of proof to sustain her claim, but nonetheless denied defendant's motion. We granted defendant's application for leave to appeal.

"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." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). The duty generally does not include removing open and obvious dangers unless the premises owner should anticipate that special aspects of the condition make even an open and obvious risk unreasonably dangerous. *Id.* at 517. Whether a hazardous condition is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). The determination depends on the characteristics of a reasonably prudent person, and not on the characteristics of a specific plaintiff. See *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329 n 10; 683 NW2d 573 (2004). An ever-changing and uncorroborated account is nothing more than speculation and conjecture and does not demonstrate that a defendant knew or had reason to know of the

existence of a dangerous condition. *D'Ambrosio v McCready*, 225 Mich App 90, 96; 570 NW2d 797 (1997). In Michigan, it is the overriding public policy to encourage people to take reasonable care for their own safety and watch where they are walking. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995).

In the present case, plaintiff presented nothing more than speculation and conjecture. *D'Ambrosio, supra*. She could not identify the cause of her fall and merely theorized that there were special aspects to the mat because it moved across the floor without providing record evidence. Accordingly, the trial court erred in denying defendant's motion for summary disposition.

Reversed.

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