

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICIA FITZPATRICK,

Plaintiff-Appellant,

v

TERESA BETANZOS and RAPHAEL  
BETANZOS,

Defendants-Appellees.

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UNPUBLISHED

March 24, 2009

No. 282719

Wayne Circuit Court

LC No. 06-634919-NO

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this action involving a fall on a stairway. The trial court determined that in light of the open and obvious doctrine, defendants did not owe a duty to plaintiff. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Although we agree with plaintiff that the open and obvious doctrine does not apply to claims of ordinary negligence, *Laier v Kitchen*, 266 Mich App 482, 489-490, 502; 702 NW2d 199 (2005), plaintiff has not established a claim of ordinary negligence distinct from premises liability. Accepting as accurate the testimony that defendant Teresa Betanzos turned off the light while plaintiff was on the deck, that action did not injure plaintiff. To the extent that the adequacy of the lighting contributed to the danger posed by the stairway, the lighting is inextricably linked to that condition, and the claim is one of premises liability, not ordinary negligence. Plaintiff's argument that an ordinary negligence case may be based on Teresa Betanzos' failure to control her cat is also unpersuasive. An ordinary negligence action may exist for failure to control a domestic animal if the owner is aware of its "dangerous propensity." See *Hiner v Mojica*, 271 Mich App 604, 615-616; 722 NW2d 914 (2006). In this case, however, there was no evidence showing a dangerous propensity of the cat.

The trial court also did not err in concluding that the hazard posed by the stairway was open and obvious. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995). Although plaintiff asserts that the difference in the height of the bottom stair and the other steps is not apparent on casual observation as one descends the steps, plaintiff does not explain how the difference in height caused her to fall. According to her description of the fall, her left foot “slipped” or she initially positioned it so that it was partially off the step, and she “went off balance.” She acknowledged that she saw that the step was there when she placed her left foot down. There is no basis for concluding that the unstable positioning of her left foot on the edge of the bottom step was attributable to a misperception in the height of that step.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood  
/s/ Alton T. Davis