STATE OF MICHIGAN

COURT OF APPEALS

DENISE MOYER,

Plaintiff-Appellee,

v

NANCY SIELOFF and KENNETH SIELOFF,

Defendants-Appellants.

UNPUBLISHED
June 30, 2009

No. 285587
Macomb Circuit Court
LC No. 05-001443-NI

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendants appeal by leave granted an order denying their motion for summary disposition. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendants argue that they owed no duty to plaintiff because any danger was open and obvious with no special aspects, and thus, they are entitled to judgment as a matter of law in this negligence action. This Court reviews de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena County Road Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). Summary disposition is proper if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*. at 166.

A negligence claim requires that a plaintiff prove the following four elements: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty; (3) causation; and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). The duty a landowner owes to those who enter the landowner's land is determined by the status of the visitor. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Michigan recognizes three traditional categories of visitors: trespasser, licensee, and invitee. *Id.* The parties do not dispute that plaintiff was a licensee when she visited defendants' home. "A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved." *Id.* Thus, a landowner need not warn a licensee of dangers already known to the licensee. *Pippin v Atallah*,

245 Mich App 136, 143; 626 NW2d 911 (2001). A natural result is that landowners have no duty with respect to visitors and "open and obvious" dangers because obvious dangers are, in fact, no danger at all to a reasonably careful person. *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 478; 760 NW2d 287 (2008).

Simply put, if the icy condition on defendants' porch was open and obvious, then defendants owed no duty to warn plaintiff of that condition. Determining if a danger was open and obvious utilizes a subjective test as well as an objective test. *Kenny v Kaatz Funeral Home, Inc*, 264 Mich App 99, 119-120; 689 NW2d 737 (2004) (Griffin, J., dissenting), adopted in 472 Mich 929 (2005). Subjectively, a danger is open and obvious if the plaintiff actually recognizes it as such. *Id.* at 119. Objectively, a danger is open and obvious even if the plaintiff did not know of its existence, but "an average user with ordinary intelligence" would have discovered it upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993); see also *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995) ("[T]he open and obvious danger doctrine will cut off liability if the [visitor] should have discovered the condition and realized its danger.").

Here, plaintiff admits that even though the porch light was not on, she was able to see that the porch was "all white and flat" as if it had been recently shoveled leaving residual snow. Thus, plaintiff had actual knowledge of the existence of *snow* on defendants' porch and any objective inquiry is not needed. Plaintiff argues that she had no actual knowledge of *ice* and nothing put her on notice that ice could be present. However, this Court has already addressed this issue when it announced, "as a matter of law[,] . . . by its very nature, a snow-covered surface presents an open and obvious danger because of the high probability that it may be slippery." *Ververis v Hartfield Lanes (On Remand)*, 271 Mich App 61, 67; 718 NW2d 382 (2006). Therefore, the slippery condition on defendants' porch was an open and obvious danger to plaintiff.

Still, if there are "special aspects" that make the open and obvious condition "unreasonably dangerous," then the premises possessor's duty to warn remains intact. See *Lugo v Ameritech Corp*, 464 Mich 512, 517; 629 NW2d 384 (2001). "Special aspects" are those that "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided." *Id.* at 519. However, "[t]he risk of slipping and falling on ice" does not "constitute a uniquely high likelihood or severity of harm and remove the condition from the open and obvious danger doctrine." *Royce v Chatwell Club Apartments*, 276 Mich App 389, 395-396; 740 NW2d 547 (2007). The types of severe harm contemplated by the Supreme Court include "an unguarded 30-foot deep pit in the middle of a parking lot" and "a commercial building with only one exit for the general public where the floor is covered with standing water." *Lugo*, *supra* at 518. These two examples show harms that present a substantial risk of death or severe injury or are effectively unavoidable. Neither aspect is present in the instant case. Slipping and falling on ice, even from a porch, does not present the same risk of death or injury as falling into a 30-foot deep pit. Also, plaintiff did not have to encounter the front porch – she could have used the rear door of the house, which she said she had done on prior occasions. Therefore, no "special aspects" existed with regard to the snow-covered, icy porch.

For these reasons, the open and obvious doctrine removes any duty defendants owed to plaintiff with regard to the snow-covered icy condition on defendants' front porch, and defendants are entitled to summary disposition on plaintiff's negligence claim.

We reverse. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio