STATE OF MICHIGAN

COURT OF APPEALS

CONSTANCE JEDRZEJAS, Individually and as Personal Representative of the Estate of RONALD JEDRZEJAS, Plaintiff-Appellee,	UNPUBLISHED June 22, 2010
v	No. 291327 Genesee Circuit Court
GENESYS REGIONAL MEDICAL CENTER, Defendant-Appellant.	LC No. 07-087710-NO

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

In this premises liability case, defendant Genesys Regional Medical Center appeals by leave granted the trial court's order denying its motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. BASIC FACTS AND PROCEDURAL HISTORY

On August 30, 2007, Ronald Jedrzejas tripped and fell over a planter in Genesys' lobby. Ronald Jedrzejas injured his knee as a result of the fall and underwent surgery in September 2007. Ronald Jedrzejas was a dialysis patient and went to Genesys regularly.

The walls of the planter were made of stone slabs that were stacked to about waist height. The base layer of the stone slabs was at floor level and protruded from the vertical surface wall out onto the floor area. Ronald Jedrzejas tripped and fell over those protruding stone slabs. No evidence showed that Ronald Jedrzejas had any mobility disabilities at the time he tripped and fell. At deposition, Ronald Jedrzejas testified that if he had looked down he would have seen the stone slabs and not tripped over them. Genesys' nurse was present at the time Ronald Jedrzejas tripped and fell over the planter's stone slabs. She testified that in the ten years she had worked at the center, she never saw or heard of anyone tripping on the stone slabs. She marked one of the photographs in evidence, circling the two stone slabs over which Ronald Jedrzejas tripped. Ronald Jedrzejas died in October 2009, about six months after this appeal was filed, of causes unrelated to this suit.

Constance Jedrzejas, as personal representative of Ronald Jedrzejas' estate, sued Genesys for negligence in placing or constructing the stone-slab wall so as to create a tripping hazard.

Genesys moved for summary disposition. It argued that there was no genuine issue of material fact that any dangerous condition was open and obvious, and that there were no special aspects to the condition that would otherwise make it liable for harm caused by this open and obvious condition.

Constance Jedrzejas argued that Ronald Jedrzejas encountered the stone slabs on the floor immediately after he turned at a "blind corner" and tripped over the stones. Constance Jedrzejas asserted that the stone slabs could not be considered open and obvious because they were not visible from Ronald Jedrzejas' vantage point in the hallway immediately before he fell. Constance Jedrzejas also argued that the placement of the stone slabs created an unreasonable risk of harm due to the fact that Genesys serves patients who might be fully or partially disabled and, therefore, more prone to miss otherwise open or obvious hazards.

The trial court found that genuine issues of fact existed regarding whether a reasonable person could have discovered the tripping hazard posed by the stone slabs. The trial court also noted that hospitals should be aware of who might be using their facilities. Therefore, the trial court denied Genesys's motion for summary disposition. Genesys now appeals.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny a motion for summary disposition.[1] Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact, upon which to base his case.[2]

B. OPEN AND OBVIOUS DOCTRINE

A premises possessor owes a duty to use reasonable care to protect invitees from an unreasonable risk of harm caused by dangerous conditions on the premises, unless the dangers are known to the invitee or are open and obvious.[3] A danger is open and obvious if it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection.[4]

We conclude that the tripping hazard posed by the rocks was open and obvious. An average pedestrian of ordinary intelligence would have seen the rocks protruding from the base of the planters upon casual inspection and could have avoided tripping over them. In fact,

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[1] *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[2] *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

[3] *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001).

[4] *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002).

Ronald Jedrzejas testified at deposition that if he had looked down he would have seen the rocks and not tripped on them. The record presented does not support Constance Jedrzejas' theory that the planter and rocks somehow "suddenly appeared" around a "blind corner" so as to create an abnormally high likelihood that someone would trip over them. The photographs of the hallway show that the rocks and base of the planter in question were clearly visible from the hallway. Even if walking at a very fast pace, someone exercising reasonable caution should have noticed the rocks and avoided walking into them. Under these circumstances, the stone slabs at the base of the planter were an open and obvious danger.

C. SPECIAL ASPECTS

Where special aspects of a condition make even an open and obvious risk unreasonably dangerous, the possessor must take reasonable steps to protect invitees from harm.[5] Special aspects are those that "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided."[6] Neither a common condition nor an avoidable condition is uniquely dangerous.[7] Even though it could be argued that people can suffer severe harm from falls to the floor, the question regarding trips and falls is whether there is some unique risk associated with the condition.[8] And this Court has held that a fall to the floor does not pose a uniquely high likelihood of harm or severity of harm.[9] Moreover, a trip and fall to the floor in a hospital setting does not create a special aspect because the uniquely high likelihood of harm or severity of harm does not change. Despite Constance Jedrzejas' argument that the presence of patients makes a difference, the case law is clear that the standard is "an *average* person with ordinary intelligence."[10] Indeed, Genesys' nurse testified that as far as she knew no one had ever fallen on the stones in the past ten years. Therefore, there were no special aspects under the circumstances.

D. COMPARATIVE NEGLIGENCE

We need not address any remaining issues of comparative negligence because this case is fully resolved by our decision that the stone slabs were an open and obvious condition.[11]

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[5] *Lugo*, 464 Mich at 517.

[6] *Id*. at 519.

[7] *Corey v Davenport College of Business* (*On Remand*), 251 Mich App 1, 8-9; 649 NW2d 392 (2002).

[8] *Id.*

[9] See, e.g., *id.* at 7.

[10] *Joyce*, 249 Mich App at 238 (emphasis added).

[11] *Riddle v McLouth Steel Prods Corp*, 440 Mich 85, 95; 485 NW2d 676 (1992) ("[T]he duty element and the comparative negligence standard are fundamentally exclusive—two doctrines to be utilized at different junctures in the determination of liability in a negligence cause of action.").

E. CONCLUSION

The trial court erred in failing to grant Genesys' motion. We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ William C. Whitbeck