STATE OF MICHIGAN

COURT OF APPEALS

JAMES CARPENTER, Plaintiff-Appellant,	UNPUBLISHED July 1, 2010
v	No. 291155 Saginaw Circuit Court
COATIS ANDERSON, Defendant-Appellee.	LC No. 07-065357-NO

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Plaintiff filed suit alleging that on December 16, 2005, he went to defendant's home as a visitor. Plaintiff alleged that after entering the premises he slipped on an invisible liquid on the landing and fell down stairs, sustaining a serious and permanent injury to his shoulder. Plaintiff alleged that defendant negligently failed to maintain his premises in a reasonably safe condition and failed to warn of the unsafe condition of the premises.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10),[1] arguing that at all relevant times he had no actual or constructive notice of any defect on his premises, and that any defect that did exist was open and obvious and presented no special aspects that would make it unreasonably dangerous notwithstanding its open and obvious nature. Defendant indicated that on the day plaintiff fell, numerous persons, including plaintiff, had gathered at defendant's residence for a card game; no one reported the presence of liquid on the landing, and no one other than plaintiff had difficulty walking on the landing or the stairs.

The trial court granted defendant's motion for summary disposition. The trial court declined to decide whether plaintiff was a licensee or an invitee on defendant's premises on the

[1] Subsequently, defendant proceeded under MCR 2.116(C)(10), only.

ground that the case could be resolved without making that determination.[2] The trial court found as a matter of law that the hazard giving rise to plaintiff's injuries was open and obvious, and presented no special aspects that made it unreasonably dangerous notwithstanding its open and obvious nature.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition because a genuine issue of material fact existed as to whether the liquid on defendant's landing was open and obvious. We disagree.

We review the trial court's decision on a motion for summary disposition de novo. In reviewing a motion brought pursuant to MCR 2.116(C)(10), we must review the record evidence and all reasonable inferences drawn therefrom in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists. *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).

Plaintiff was a social guest at defendant's home. A social guest is a licensee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000).[3] A premises owner has a duty to warn an adult licensee of a hidden danger of which the owner knows or has reason to know, if that hidden danger poses an unreasonable risk of harm and the licensee does not know or have reason to know of the danger. A premises owner also has a duty to refrain from wanton and willful misconduct. A premises owner does not owe a licensee a duty of inspection, and has no obligation to prepare the premises for the licensee. *Id*.

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 612; 537 NW2d 185 (1995). Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon

---

[2] The trial court noted that were it forced to decide the issue, it would determine that plaintiff was a licensee.

[3] We cannot conclude that plaintiff in the instant case is analogous to the plaintiff in *Manning v Bishop of Marquette*, 345 Mich 130; 76 NW2d 75 (1956). In *Manning*, the plaintiff had been playing bingo at a church. *Id*. at 132. After the bingo game concluded, while the plaintiff was leaving the church property, she was injured when she stepped in a hole and fell to the ground. *Id*. The *Manning* Court held that the plaintiff had been on the church property as an invitee, *id*. at 137, presumably because she had been at the church for a solely commercial purpose, *Stitt*, 462 Mich at 601-602 (describing the facts of *Manning* and observing that the plaintiff in that case had been "on church premises . . . for a commercial purpose"). In contrast to the plaintiff in *Manning*, however, plaintiff in the present case specifically testified at his deposition that, in addition to going to defendant's house to play cards, he also "went by [defendant's house] to visit with him." Accordingly, plaintiff admits that he was not on defendant's premises for solely commercial purposes, and that he was actually there as a social guest. Because plaintiff was not on defendant's premises for an essential commercial purpose or in furtherance of defendant's own "commercial business interests," he was merely a licensee. *Stitt*, 462 Mich at 604.

casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

The facts of this case, viewed in a light most favorable to plaintiff, showed that plaintiff walked through a thin layer of snow to reach defendant's door, and when admitted to defendant's residence, stepped inside and onto a landing that was covered in vinyl. We conclude that the trial court correctly found that the danger of falling on a vinyl floor while wearing shoes that were wet was open and obvious. Plaintiff, who had lived in Michigan for more than 35 years at the time of the accident, knew or should have known of the danger of stepping onto a vinyl floor—i.e., that water could have accumulated on the floor and that he, himself, could have tracked moisture into the home. The danger of stepping on a vinyl floor during the winter is well known to adults who live in Michigan; therefore, we hold that defendant had no duty to warn plaintiff of the condition. The fact that plaintiff did not observe any of the moisture that was on the landing is irrelevant to the issue of whether the condition was open and obvious. As the *Novotney* Court stated:

> [T]he analysis whether a danger is open and obvious does not revolve around whether steps could have been taken to make the danger more open or obvious. Rather, the equation involved is whether the danger, as presented, is open and obvious. The question is: Would an average user with ordinary intelligence have been able to discover the danger and the risk presented upon casual inspection? [*Novotney*, 198 Mich App at 474-475.]

We conclude that, with respect to water on a vinyl surface during the winter, it is reasonable to expect that plaintiff, as a licensee, would have discovered the danger. Nor can we conclude that there were any special aspects making the condition unreasonably dangerous or effectively unavoidable despite its open and obvious nature. See *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517-519; 629 NW2d 384 (2001). The trial court correctly granted defendant's motion for summary disposition.

Affirmed.

/s/ Kathleen Jansen
/s/ Pat M. Donofrio