STATE OF MICHIGAN

COURT OF APPEALS

JERRY D. TYLER, Plaintiff-Appellant,	UNPUBLISHED March 15, 2016
v	No. 325259 Midland Circuit Court
SPEEDWAY, LLC, Defendant-Appellee.	LC No. 14-001403-NO

Before: GLEICHER, P.J., and MURPHY and OWENS, JJ.

PER CURIAM.

The circuit court summarily dismissed Jerry Tyler's premises liability action against a Speedway gas station after determining that the condition that caused Tyler's injury was open and obvious. Because Tyler essentially conceded this point at his deposition, we affirm.

I. BACKGROUND

Tyler was injured as he walked into the men's restroom at a Speedway gas station. As the door closed behind him, Tyler used his left elbow to slow the door's momentum. As he did so, Tyler felt something scrape and cut his arm. He turned around and saw a coat hook attached to the back of the door, which he assumed caused his injury.

Tyler filed suit, alleging that he was an invitee at the gas station and Speedway had a duty to inspect and maintain the premises in a safe condition. Following discovery, Speedway sought summary disposition pursuant to MCR 2.116(C)(10). Speedway contended that Tyler was only a licensee at the gas station that day. Even if he were an invitee, Speedway continued, it had no duty to protect Tyler from the coat hook as it was an open and obvious condition.

The circuit court assumed that Tyler was an invitee and that Speedway owed him a heightened duty of care. The coat hook was readily visible, however, rendering it an open and obvious "danger." The court discerned no evidence rendering the hook unreasonably dangerous or unavoidable. Accordingly, the court dismissed Tyler's action. He now appeals that ruling.

II. ANALYSIS

> We review a trial court's decision on a motion for summary disposition de novo. *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 243; 704 NW2d 117 (2005). . . .
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> A motion under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate . . . if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App at 621. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West*, 469 Mich at 183. [*Zaher v Miotke*, 300 Mich App 132, 139-140; 832 NW2d 266 (2013).]

The parties agree that this case sounds in premises liability. Premises liability is a form of negligence. In general, "[t]o establish a prima facie case of negligence, a plaintiff must prove that (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant's breach was a proximate cause of the plaintiff's damages." *Hill v Sears, Roebuck & Co*, 492 Mich 651, 660; 822 NW2d 190 (2012) (quotation marks and citation omitted). More specific to premises liability actions:

> The law of premises liability in Michigan has its foundation in two general precepts. First, landowners must act in a reasonable manner to guard against harms that threaten the safety and security of those who enter their land. Second, and as a corollary, landowners are not insurers; that is, they are not charged with guaranteeing the safety of every person who comes onto their land. These principles have been used to establish well-recognized rules governing the rights and responsibilities of both landowners and those who enter their land. Underlying all these principles and rules is the requirement that both the possessors of land and those who come onto it exercise common sense and prudent judgment when confronting hazards on the land. These rules balance a possessor's ability to exercise control over the premises with the invitees' obligation to assume personal responsibility to protect themselves from apparent dangers. [*Hoffner v Lanctoe*, 492 Mich 450, 459-460; 821 NW2d 88 (2012) (citations omitted).]

"The starting point" in such a case is to establish "what duty a premises possessor owes to those who come onto his land." *Id.* at 460. There are three common-law categories in which visitors to one's land fall: invitees, licensees, and trespassers. One's category decides the duty owed. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000).

Although Speedway continues to argue that Tyler was a licensee, we assume for the sake of argument that he was an invitee at the gas station on the day in question. We proceed under this assumption because even under the heightened duty of care owed to an invitee, Speedway cannot be held legally liable for Tyler's injury.

> [A] landowner owes a duty to use reasonable care to protect invitees from unreasonable risks of harm posed by dangerous conditions on the owner's land. Michigan law provides liability for a breach of this duty of ordinary care when the premises possessor knows or should know of a dangerous condition on the premises of which the invitee is unaware and fails to fix the defect, guard against the defect, or warn the invitee of the defect. [*Hoffner*, 492 Mich at 460.]

The landowner bears no duty to protect or warn against an open and obvious danger, however, "because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid." *Id.* at 460-461. Whether a condition is open and obvious is gauged objectively from the perspective of "an average person of ordinary intelligence" to determine whether the danger could be detected "by casual observation" or "on casual inspection." *Price v Kroger Co*, 284 Mich App 496, 500-501; 773 NW2d 739 (2009).

Tyler's own deposition testimony established that the coat hook was open and obvious. Tyler asserted that the lights were on when he entered the Speedway bathroom. Tyler had used the restroom at this particular gas station four times before his accident. He admitted that the coat hook was "visible" "[o]nce you're inside the bathroom." He elaborated, "[I]f you turned to your left and looked it was visible," and admitted that on his previous visits to this station, he "just knew [the hook] was there." On this occasion, Tyler did not turn to the left and therefore did not see the coat hook. We fail to understand how Tyler can fault the circuit court's ruling given his concession that he knew the coat hook was on the back of the door. That Tyler failed to look at the door on this occasion or forgot about the hook, does not negate that the coat hook would have been open and obvious to an average person of ordinary intelligence.

Tyler contends that special aspects rendered the coat hook so unreasonably dangerous that the open and obvious doctrine must give way. To find "special aspects," the danger must be unreasonably dangerous or effectively unavoidable. *Hoffner*, 492 Mich at 461-463. A condition is "unreasonably dangerous" if it "present[s] an extremely high risk of severe harm . . . where there is no sensible reason for such an inordinate risk of severe harm to be presented." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 519 n 2; 629 NW2d 384 (2001). Only "unusual" conditions where the "risk of harm . . . is so unreasonably high" that its presence is "inexcusable" will rise to this level. *Hoffner*, 492 Mich at 462; *Lugo*, 464 Mich at 518-519 n 2.

Tyler presented no evidence supporting that this coat hook was so unreasonably dangerous as to be inexcusable. Apparently, the metal plate that held the hook to the door was square and therefore had corners. Tyler also insisted that it was placed too close to the door knob. Yet, there is no record indication that the corners of the hook's base could cause severe harm, let alone rise to the level of danger necessary to avoid the open-and-obvious doctrine.

Tyler also presented no evidence that the hook was unavoidable. Tyler testified that the bathroom door swings shut on its own. No person entering the bathroom was required to reach

back without looking to close the door. The individual could then move freely about the restroom without making contact with the hook. And access to the interior doorknob was not hindered by the hook.

Accordingly, even if Tyler were an invitee, Speedway would have borne no duty to inspect, repair, or warn of the coat hook. It was an open and obvious condition and nothing rendered the hook unreasonably dangerous or unavoidable. As such, the circuit court properly dismissed Tyler's complaint.

We affirm. Speedway, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Elizabeth L. Gleicher
/s/ William B. Murphy
/s/ Donald S. Owens