STATE OF MICHIGAN

COURT OF APPEALS

BARBARA LABADIE, Plaintiff-Appellant,	UNPUBLISHED April 26, 2016
v	No. 325636 Mecosta Circuit Court
WALMART STORES, INC., Defendant-Appellee.	LC No. 14-022197-NO

Before: SAAD, P.J., and BORRELLO and GADOLA, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). For the reasons set forth in this opinion, we affirm.

I. FACTS

This case arises out of plaintiff's slip and fall in the vestibule of a Wal-Mart store in Big Rapids, Michigan on May 20, 2013. Plaintiff testified at a deposition that it was "pouring" "like buckets" when her husband dropped her off at the door of the Wal-Mart store. Plaintiff testified that when she entered the store she "was looking at the people. Not the floor." When asked whether she noticed the texture of the floor that she slipped on, she answered, "No. I was looking—no, I wasn't looking at the floor as I was walking." Plaintiff testified that after she fell, as she was sitting on a bench, she noticed "[p]uddles" and described "[t]he whole foyer" as "wet." When asked if that was the cause of her fall, she answered, "absolutely," and referred to the puddle that caused her fall as "Probably 5, 6 feet wide." Plaintiff also testified as to the presence of rugs in the vestibule. She explained that she did not see the rugs when she entered the store because she was not looking at the floor.

Sally Jack testified that she witnessed the fall. Jack recalled that it was "[p]ouring rain" at the time, and she saw several people with umbrellas as she was waiting in the vestibule for the rain to let up. According to Jack, two or three minutes before plaintiff's fall, "this one lady c[a]me in with an umbrella and it just seemed like it was an umbrella that collected rain. She didn't put it down until after she got into the store and it left quite a puddle on the floor." She described herself as "startled" "[b]y the amount of water" from the umbrella. "[A] few minutes later," Jack continued, "the lady that fell came in and somehow she slipped." Jack testified that she noticed water on the floor after the lady with the umbrella entered the store.

Plaintiff filed this lawsuit ten months later, asserting one count of premises liability. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it was entitled to summary disposition pursuant to the open and obvious danger doctrine because plaintiff admitted to being "'absolutely' able to detect a five to six foot wide puddle of water at the location of her fall while she sat on a bench immediately after her fall," and because another store patron described the puddle of water as "readily apparent to her from her standing position several feet away from the slip and fall." Defendant also argued that plaintiff "was aware that it was raining heavily when she arrived at Wal-Mart" and "could have avoided the area where she fell had she merely walked along the rugs that were in place inside the vestibule."

Plaintiff responded, arguing that the puddle of water was not open and obvious because "there were no wet floor signs down inside the vestibule" and people and merchandise in the vestibule "would have distracted any person of ordinary intelligence away from the door." Plaintiff further argued that the fact that "there had been 17 prior falls, most of which apparently were because of water on the tile floor," was "a good indication over whether the condition would be objectively open and obvious." Additionally, plaintiff argued that photographs taken of the area where she slipped supported her position because they "d[id] not show standing water." Plaintiff also contended that the lack of obviousness of the puddle could be inferred by the fact that "there was a flurry of activity by Wal-Mart employees to remedy the wet floor" "after the fall."

After hearing oral argument, the trial court granted defendant's motion for summary disposition under the open and obvious doctrine. The trial court relied on evidence of the weather on the day of plaintiff's fall, plaintiff's recollection of puddles in the parking lot, the difference in the surfaces between the rugs and the floor that plaintiff slipped on, the fact that the allegedly hazardous condition could have been avoided, and plaintiff's and Jack's testimony regarding the presence of the puddle of water. "[O]bjectively," the court explained, "your average person, with reasonable intelligence with casual inspection of the floor, as you came in on a rainy, wet day would've seen this, should've been looking for this."[1] This appeal ensued.

II. ANALYSIS

On appeal, plaintiff argues that the trial court erred in granting summary disposition in favor of defendant because, according to plaintiff, the puddle did not pose an open and obvious hazard.

"We review de novo a trial court's decision on a motion for summary disposition to determine whether the moving party is entitled to judgment as a matter of law." *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012). "In reviewing a motion brought under MCR 2.116(C)(10), we review the evidence submitted by the parties in a

[1] Despite having granted summary disposition on open and obvious grounds, the court proceeded to hold that defendant had actual and constructive notice of the wet floor. However, that aspect of the court's holding is not at issue in this appeal given that the open and obvious question is dispositive.

light most favorable to the nonmoving party to determine whether there is a genuine issue regarding any material fact." *Id.* "A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ." *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006).

In this case, plaintiff does not dispute that her claim sounds in premises liability. "With regard to invitees, 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." *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88 (2012). However, a landowner generally does not owe a duty with respect to defects that are "open and obvious." *Id*. at 460-461. "The possessor of land owes no duty to protect or warn of dangers that are open and obvious because such dangers, by their nature, apprise an invitee of the potential hazard . . . ." *Id.* (quotation marks and citation omitted). To determine whether a danger is open and obvious requires a court to engage in an objective inquiry to "determine whether it is reasonable to expect that an average person with ordinary intelligence would have discovered [the danger] upon casual inspection." *Id.* at 461 (quotation marks, citations, and footnote omitted). This test is objective; it asks whether "a reasonable person in the plaintiff's position would have foreseen the danger, not whether the particular plaintiff knew or should have known that the condition was dangerous," as "gleaned from all of the senses as well as one's common knowledge." *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 479; 760 NW2d 287 (2008).

In this case, the trial court properly concluded that summary disposition pursuant to MCR 2.116(C)(10) was appropriate because no material question of fact existed regarding the open and obvious nature of the hazard posed by the puddle of water in the vestibule. It was indisputably rainy on the day of plaintiff's fall—plaintiff said that it was "pouring" "like buckets" when she entered the store. Jack testified that it was "pouring rain" immediately before plaintiff slipped and store patrons had umbrellas at the time. Jack testified that she could see water on the floor before plaintiff fell. Given the heavy rain, a reasonable person in plaintiff's position would have discerned that the entryway was wet and slippery upon a casual inspection. It was reasonable to assume that, under such weather conditions, water could accumulate in the entryway of the Wal-Mart, particularly considering the store could have a high amount of foot traffic. Moreover, plaintiff indicated that she "wasn't looking at the floor as [she] was walking" and that, after her fall, she plainly saw a "[p]robably 5, 6 feet wide" puddle on the floor that "[a]bsolutely" caused her fall. Considering all of the circumstances, there was no question of fact regarding whether a reasonable person would have observed the puddle upon a casual inspection and plaintiff's arguments to the contrary are unpersuasive. See *Hoffner*, 492 Mich at 461. In short, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed. No costs awarded. MCR 7.219(A).

/s/ Henry William Saad
/s/ Stephen L. Borrello
/s/ Michael F. Gadola