

STATE OF MICHIGAN
COURT OF APPEALS

VERLENA SEXTON-WALKER,

Plaintiff-Appellant,

UNPUBLISHED
April 26, 2012

v

GREAT EXPRESSIONS DENTAL CENTERS,
P.C.,

No. 302513
Macomb Circuit Court
LC No. 2010-000976-NO

Defendant-Appellee.

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

In this premises liability action, plaintiff, Verlena Sexton-Walker, appeals as of right the trial court's order granting summary disposition to defendant, Great Expressions Dental Centers, P.C. We affirm.

I. FACTS

This case arises from a slip and fall that took place in August 2009. Sexton-Walker was walking down a well-lit hallway at Great Expressions' dental office, when she came upon a mat. The mat was a desk chair floor mat, made of thick, clear plastic material, with a tongue or flap protruding from it. Sexton-Walker described the mat as stationary. Sexton-Walker claimed that she stood in the hallway, observed the mat, and watched a dental assistant, who was leading her to her examination room, walk across the mat.

After walking across the mat with no trouble, the dental assistant motioned to Sexton-Walker to enter an examination room. Sexton-Walker proceeded across the mat and turned to go into an examination room when the mat "started swerving." The mat had nothing on top of it, such as water. Sexton-Walker stated that she was "completely on the mat," fell because of the tongue of the mat, and caught her leg on the leg of a desk adjacent to the mat. As a result of the fall, Sexton-Walker sustained bilateral collar bone, spinal, left foot, knee, and shoulder injuries.

Sexton-Walker filed a complaint against Great Expressions, alleging gross negligence in leaving the mat in the hallway and causing her fall. After the completion of discovery, Great Expressions moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the mat was open and obvious and lacked special aspects to impose a duty on Great Expressions.

Sexton-Walker then moved to exclude certain alleged prejudicial evidence, stating that exhibit 6 to Great Expressions' motion for summary disposition was unfairly prejudicial. Exhibit 6 was a letter from Dr. Lin, one of Sexton-Walker's treating physicians, who stated that Sexton-Walker had a decrease in her eyesight due to a previous motor vehicle accident. Sexton-Walker argued that Dr. Lin's testimony would be confusing and misleading because her eyesight "fluctuated," and further, that Dr. Lin could not testify to the quality of her eyesight on the date of the incident.

The trial court heard Great Expressions' motion for summary disposition. However, Sexton-Walker failed to properly respond to Great Expressions' motion for summary disposition, instead filing a motion to dismiss Great Expressions' motion. The trial court gave Sexton-Walker time to file a proper response, at which time it would file a written opinion and order. Sexton-Walker revised her motion and refiled, emphasizing that 15 percent of the mat was obstructed from her view.

The trial court then issued an opinion and order. The trial court denied Sexton-Walker's motion to exclude evidence, stating that the evidence presented by Great Expressions, although prejudicial, was not *unfairly* prejudicial. Regarding Great Expressions' motion for summary disposition, the trial court held that the risks inherent in the mat were "open and obvious" to an average user of ordinary intelligence upon casual inspection. The trial court further held that there were no "special aspects" of the mat that made it unreasonably dangerous or presented a uniquely high likelihood of severe harm. The trial court stated, "The mat was a simple product without an unusual surface or configuration." The trial court therefore granted Great Expressions' motion for summary disposition.

Sexton-Walker then moved for reconsideration, arguing that the tongue of the mat created a special aspect. But the trial court held that because Sexton-Walker alleged no more than what was originally alleged, her motion must be denied.

Sexton-Walker now appeals.

II. OPEN AND OBVIOUS

A. STANDARD OF REVIEW

Sexton-Walker argues that the desk chair floor mat at issue, even if open and obvious, had special aspects imposing an additional duty of care on Great Expressions that it breached causing her injury. For these reasons, Sexton-Walker argues, the trial court improperly granted summary disposition to Great Expressions and improperly denied her motion for reconsideration.

This Court reviews *de novo* a trial court's decision regarding a motion for summary disposition based on the lack of a genuine issue of material fact.¹ This Court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted in the

¹ *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006).

light most favorable to the party opposing the motion.² A court properly grants summary disposition if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.³

This Court reviews for an abuse of discretion a trial court's decision on a motion for reconsideration.⁴ "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes."⁵

B. LEGAL PRINCIPLES

To be an invitee, a plaintiff's presence on a defendant's land must have been related to an activity of some tangible benefit to the defendant.⁶ An invitor has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition of the land when the landowner knows or should know that the invitee will not discover, realize, or protect himself against it.⁷ If a condition is open and obvious, there is no duty to warn of the obvious condition.⁸ A condition is open and obvious when an invitee might reasonably be expected to discover the danger upon reasonable inspection.⁹ If an open and obvious danger includes special aspects that render the risk of harm unreasonable despite its obviousness and knowledge of the invitee, then the invitor must undertake reasonable precautions to protect the invitee from that risk.¹⁰ An open and obvious danger presents such special aspects when circumstances render the danger of harm unavoidable or impose an unreasonably high risk of severe harm.¹¹

C. ANALYSIS

Sexton-Walker was present on Great Expressions' land as a patient in its dental practice. Sexton-Walker was thus on the land related to an activity of tangible benefit to Great Expressions. Therefore, Sexton-Walker was an invitee at Great Expressions' establishment.

² *Id.*

³ MCR 2.116(C)(10); *Greene*, 475 Mich at 507.

⁴ *Sherry v East Suburban Football League*, 292 Mich App 23, 31; 807 NW2d 859 (2011).

⁵ *Id.*, quoting *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

⁶ *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993).

⁷ *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11, 16-17; 643 NW2d 212 (2002).

⁸ *Id.*

⁹ *Ghaffari v Turner Constr Co*, 473 Mich 16, 21-22; 699 NW2d 687 (2005).

¹⁰ *Lugo v Ameritech Corp*, 464 Mich 512, 518; 629 NW2d 384 (2001).

¹¹ *Id.*

The mat was in a well-lit hallway. Sexton-Walker even stated that she observed the mat before walking across it. Sexton-Walker also observed a dental assistant walk across the mat. The mat was therefore in an area where Sexton-Walker could and did discover it. The mat was unquestionably open and obvious. The fact that Sexton-Walker did not appreciate the danger of slipping on the mat does not render Great Expressions liable, nor does the fact that a dental assistant stated that she felt the mat should not have been there.

Further, the mat had no special aspects that created an unavoidable risk of harm. The mat was a simple desk chair floor mat in a well-lit hallway. Sexton-Walker took the time to observe the mat before walking across it and, after watching a dental assistant walk across it, decided to also walk across the mat. Nothing about the mat or its placement indicates that it was unavoidable.

Moreover, nothing about the mat imposed an unreasonably high risk of severe harm. Sexton-Walker described the mat as stationary, but insisted that the tongue, which was hidden from her view, created a high risk of severe harm. Sexton-Walker, however, presented no argument regarding how the tongue created a risk of harm, aside from the fact that it was out of her view. There is no indication on the record that a fall in a well-lit hallway in Great Expressions' office would cause death or severe injury. Even if the tongue was out of her view, the tongue is not a special aspect creating an unreasonably high risk of severe harm. Nothing had been spilled on the mat, and the mat did not have an unusual surface pattern. The mat was made of clear plastic material. The trial court therefore correctly found that there was no genuine issue of material fact that the mat was open and obvious and had no special aspects that created a danger that was unavoidable or an unreasonable risk of severe harm.

For the same reasons, the trial court also did not abuse its discretion in denying Sexton-Walker's motion for reconsideration. Generally, a motion for rehearing or reconsideration that "merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted."¹² Sexton-Walker presented the same argument, in the same form, on her motion for reconsideration. The trial court thus did not act outside of the range of principled outcomes in holding that, without other argument based on the evidence, Sexton-Walker's motion be denied.

III. EXCLUSION OF EVIDENCE

A. STANDARD OF REVIEW

Sexton-Walker argues that the trial court improperly denied her motion to exclude evidence related to Dr. Lin. This Court reviews for an abuse of discretion a trial court's decision whether to admit evidence.¹³

¹² MCR 2.119(F)(3).

¹³ *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010).

B. ANALYSIS

Evidence is admissible only if it is relevant and not otherwise excluded.¹⁴ Here, Dr. Lin's testimony was relevant. Great Expressions presented evidence through Dr. Lin that Sexton-Walker had impaired vision, tending to show that the cause of her fall was not inherent in the mat, but due to her inability to see clearly. Although the test for an open and obvious condition is objective, if the case were to proceed to trial, evidence regarding her eyesight would surely be relevant.

Even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.¹⁵ Not all damaging evidence is unfairly prejudicial; rather, evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the trier of fact.¹⁶

Here, Dr. Lin's testimony was also not unfairly prejudicial. Dr. Lin's testimony was highly probative to the issue of causation. Further, Dr. Lin's testimony was only that Sexton-Walker's eyesight, at the time he saw her, was impaired. Sexton-Walker failed to show how the evidence was unfairly prejudicial. Sexton-Walker's assertions that her vision fluctuated and that Dr. Lin had not examined her on the day in question did not render the evidence unfairly prejudicial. Rather, Sexton-Walker's assertions pertain to matters of witness credibility. The trial court therefore did not act outside of the range of principled outcomes in finding that Dr. Lin's testimony was not unfairly prejudicial. Therefore, it did not abuse its discretion in denying Sexton-Walker's motion to exclude evidence.

We affirm.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

¹⁴ MRE 403.

¹⁵ *Id.*

¹⁶ *Lewis v Legrow*, 258 Mich App 175, 199; 670 NW2d 675 (2003).