

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LORNA SCHLECHT,

Plaintiff-Appellee,

v

DAVID DOOM and SUZANNE DOOM,

Defendants-Appellants.

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UNPUBLISHED  
November 6, 2012

No. 304446  
Monroe Circuit Court  
LC No. 10-029108-NO

Before: MURRAY, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

In this premises liability action defendants appeal by leave granted<sup>1</sup> an order denying their motion for summary disposition pursuant to MCR 2.116(C)(10), and granting summary disposition for plaintiff pursuant to MCR 2.116(I)(2). We reverse and remand for entry of an order granting defendants' motion for summary disposition.

**I. FACTS AND PROCEEDINGS**

Plaintiff arrived at defendants' home on October 10, 2009, for a memorial gathering for her ex-husband at approximately 5:30 p.m. Plaintiff immediately went into the kitchen and made a plate of food. Plaintiff then went into the family room, which was part of a new addition to defendants' home, and sat in a chair and ate her food. When plaintiff finished her food she yelled, "Where's the bathroom." "Someone," an unknown female, answered plaintiff and indicated that the bathroom was through the laundry room. Plaintiff then went into the laundry room, which is adjacent to the family room and also a part of the new addition to defendants' home.

The door to the laundry room was open, and it was very dark inside the room. There was a tiny night light flickering inside the laundry room, and there was light traveling into the laundry room from the family room. Plaintiff saw a washer and dryer and a door inside the room, but did not look for light switches on the wall in the laundry room. Plaintiff then walked

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<sup>1</sup> *Schlecht v Doom*, unpublished order of the Court of Appeals, entered February 16, 2012 (Docket No. 304446).

to a door inside the laundry room, which she believed to be the bathroom door, opened the door and reached for a light, as it was “pitch black” inside the door; plaintiff did not look for a light switch. Simultaneously, plaintiff stepped inside the door, looking straight ahead and, thinking the floor was flat, stepped forward and fell down the basement stairs.

After discovery defendants filed a motion for summary disposition, arguing that they did not violate their duty to plaintiff, a licensee, when she stepped into an obvious stairwell. Plaintiff responded that a genuine issue of fact existed as to whether the stairwell was inherently dangerous, as two of her experts, Donald Malinowski and Charles LaPointe, testified that the door should have opened away from the stairwell, not into it, and since it opened into it, the building code required a flat surface immediately upon entry. As we noted, the trial court denied defendants’ motion and granted summary disposition to plaintiff under MCR 2.116(I)(2), utilizing the following rationale:

Okay. I think this has a really common sense outcome. Anyone that, if we were to shut off all of the lights in here and then ask people to exit, they would go to a door and the first thing they would do is open the door and take a step, at least one step inside in order to either find out where they’re going or to try to find a light switch to illuminate it.

What I find in this case is that anyone that’s in someone else’s house looking to use the bathroom would’ve done the same thing. You open the door but you don’t stand there on this side of the threshold; open the door, peer in to see what’s there or if you’re going to let some dog out or if you’re going to find out there’s some other danger or to, again, stand on this side of the threshold, reach through, and flip on the light switch. You’re going to open the door. You’re going to take at least one step and it was only one step, right?

\* \* \*

And, down someone goes and -- and the danger here is you could break your neck and get killed. And, I’ll take judicial notice of the fact this very thing happened to my son many, many years ago at my sister’s house when he was going to what he thought was the bathroom. He missed it by one door. He opened the door just like anyone else would be expected to. You open the door, you take a step, and boom down the stairs you go. That’s the danger of it.

\* \* \*

And it’s a very dangerous condition and there’s ways to protect against that.

One, lock the door. That wasn’t done here. Two, tell people, ya know, there’s bathrooms here and there and if use [sic] that particular bathroom, it’s the second door or whatever the case might be. I think this is a very dangerous situation. And, we take into consideration as another way to avoid it and that’s to put a landing there that would at least allow a person to at least step in to the point where they could even flip on a light switch but she didn’t have that opportunity.

It's an extremely dangerous situation and she could've been killed. And, second of all was to have the door open outward as opposed to inward.

So, even though the plaintiff has attempted to hang their hat on a question of fact, I'm going to go further than that. Under 2.116(I)(2), it states if it appears to the Court that the opposing party rather than the moving party's entitled to judgment, the Court may render judgment in favor of the opposing party.

I find that this is an inherently dangerous condition, the very thing all cases wanted to warn us about.

We granted leave to appeal from the non-final order embodying the court's granting of summary disposition for plaintiff.

## II. ANALYSIS

Defendants argue that they were entitled to summary disposition pursuant to MCR 2.116(C)(10) because plaintiff did not present evidence that created a genuine issue of material fact regarding whether the condition in question was hidden, and thus, whether defendants owed plaintiff a duty to warn her of the condition.

This Court reviews de novo a trial court's denial of a motion for summary disposition to determine whether the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The party moving for summary disposition must specifically identify the matters that have no issues of disputed fact, *Coblentz v City of Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006), while the party opposing the motion has the burden of showing, through documentary evidence, that a genuine issue of material fact exists, *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). This Court considers only "what was properly presented to the trial court before its decision on the motion." *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003).

Like the trial court, this Court must review a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C) . . . (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). Additionally, "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

"To establish a prima facie case of negligence, a plaintiff must prove: (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach

caused the plaintiff's injuries, and (4) the plaintiff suffered damages." *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 60; 680 NW2d 50 (2004).

A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit. Typically, social guests are licensees who assume the ordinary risks associated with their visit. [*Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000) (citations omitted).]

Thus, "the law in Michigan requires that a landowner owes a licensee a duty to warn the licensee of any *hidden dangers* the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved." *Kosmalski*, 261 Mich App at 65. (Emphasis supplied.) "However, a possessor of land owes no duty regarding open and obvious dangers." *White v Badalamenti*, 200 Mich App 434, 437; 505 NW2d 8 (1993). "If the licensees are adults, the fact that the condition is obvious is usually sufficient to apprise them, as fully as the possessor, of the full extent of the risk involved in it." *Kosmalski*, 261 Mich at 67 (citation omitted).

The proper inquiry regarding whether a danger is open and obvious is an objective one; the question is whether an average user of ordinary intelligence would have discovered the danger and the risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). "[W]here the very condition that may cause injury is wholly revealed by casual observation, the duty to warn serves no purpose." *Id.* at 474.

"[B]ecause the danger of tripping and falling on a step is generally open and obvious, the failure to warn theory cannot establish liability." *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 614; 537 NW2d 185 (1995) (regarding a land owner's duty to an invitee). Also, "because steps are the type of everyday occurrence that people encounter, under most circumstances, a reasonably prudent person will look where he is going, will observe the steps, and will take appropriate care for his own safety." *Id.* at 616. The fact that the condition may have been in violation of a building safety code does not equate with whether a defendant owed a plaintiff a duty of care; however, once a duty is found, the violation can be prima facie evidence of negligence. See, e.g., *Cipri v Bellingham Frozen Foods, Inc.*, 235 Mich App 1, 16; 596 NW2d 620 (1999) (statute); *Ward v Frank's Nursery & Crafts, Inc.*, 186 Mich App 120, 135; 463 NW2d 442 (1990) (city ordinance); see also *Summers v Detroit*, 206 Mich App 46, 52; 520 NW2d 356 (1994).

The parties agree that plaintiff was a licensee at defendants' home. The issue in dispute is whether the condition of defendants' darkened basement stairwell was a "hidden" danger that involved an unreasonable risk of harm, and thus, whether defendants had a duty to warn plaintiff of the condition. This alleged hidden danger involves two components, which are that the area behind the basement door was "pitch black," and the construction of the basement door and stairwell did not comply with building codes. First, plaintiff asserted that the darkness is what caused her fall, but darkness is not a hidden danger. Moreover, plaintiff recognized the area behind the door was "pitch black" at the time she chose to walk through an unfamiliar door.

Plaintiff failed to present evidence that created a genuine issue of material fact indicating that a reasonable person could not have appreciated the risk of stepping through an unfamiliar door into an area that was “pitch black,” no matter what she was expecting on the other side of the door, and the evidence also indicates that plaintiff did not attempt to casually observe what was behind the door, which was a stairwell. See generally *Bertrand*, 449 Mich at 616; see also *Novotney*, 198 Mich App at 474-475.

Additionally, although Malinowski’s affidavit and LaPointe’s testimony indicated that defendants’ basement door and stairwell violated building and residential codes, this evidence does not indicate that the stairwell was a “hidden” danger, which could not be revealed to an average person by casual inspection. Furthermore, plaintiff entered the stairwell looking “straight ahead” and thinking the floor was flat, and thus, this does not shed light on whether an average person could have observed the stairwell if the person looked down while walking through the basement door. Therefore, plaintiff did not present evidence that created a genuine issue of material fact regarding whether the stairwell could have been revealed to her, had she casually inspected the area before proceeding. For this reason, plaintiff did not create a genuine issue of material fact regarding whether defendants had a duty to warn her of the basement stairwell. *Stitt*, 462 Mich at 596; *Kosmalski*, 261 Mich App at 65-67; see also generally *Cipri*, 235 Mich App at 16.

Reversed and remanded for entry of an order granting defendants’ motion for summary disposition. We do not retain jurisdiction. No costs to defendant. MCR 7.219(A).

/s/ Christopher M. Murray  
/s/ Mark J. Cavanagh  
/s/ Cynthia Diane Stephens