[Cite as *Estate of Miller v. Lamrite W., Inc.*, 2010-Ohio-4688.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94538

THE ESTATE OF BETTY L. MILLER, ET AL.

PLAINTIFFS-APPELLANTS

vs.

LAMRITE WEST, INC., DBA PAT CATAN'S CRAFT CENTER, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-676930

BEFORE: McMonagle, J., Rocco, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: September 30, 2010

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CHRISTINE T. McMONAGLE, J.:

{¶ 1} Plaintiffs-appellants, the Estate of Betty L. Miller and Calvin B. Miller, appeal the trial court's judgment granting summary judgment in favor of defendants-appellees, Lamrite West, Inc., dba Pat Catan's Craft Center and Catanzarite Investment Company, LLC ("Pat Catan's"). We reverse and remand.

I

{¶ 2} Betty[1] and Calvin Miller initiated this action as a result of injuries Betty sustained while she was a customer at Pat Catan's in Bedford. Their three-count complaint set forth claims for relief based on negligence, nuisance, and Calvin's loss of consortium. Pat Catan's filed a motion for summary judgment, which the Millers opposed. The trial court found that the "condition at issue was open and obvious," and granted Pat Catan's summary judgment motion.

II

{¶ 3} Appellate review of summary judgments is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241; *Zemcik v. La Pine Truck Sales & Equip.* (1998), 124 Ohio App.3d 581, 585, 706 N.E.2d 860. The Ohio Supreme Court enunciated the appropriate test in *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 369-70, 1998-Ohio-389, 696 N.E.2d 201, as follows:

{¶ 4} "Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor."

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[1]Betty passed away while this case was pending in the trial court and her Estate was substituted in her stead.

{¶ 5} The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264. Once the moving party satisfies its burden, the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385, 1996-Ohio-389, 667 N.E.2d 1197; Civ.R. 56(E). Doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95, 604 N.E.2d 138.

III

{¶ 6} The record before us demonstrates that Betty suffered from a variety of health problems that required her to use a motorized scooter. On the day of the incident, she was in Pat Catan's on her scooter. Calvin, her husband, drove her to the store, but waited for her on a bench in the front of the store while she was shopping.

{¶ 7} At some point, Betty went to the restroom; she drove her scooter into the restroom, parked it outside the handicap stall, got up, and walked into the handicap stall. This stall was the last stall and its door was opened outward, against the wall. After walking into the stall, Betty turned to face

the door and pulled it toward her to close it. There was no door stop mechanism on the door, and as Betty pulled the door, it swung inward, and she fell to the ground. The Millers contended that the lack of a door stop mechanism rendered the stall door defective and that Pat Catan's negligently allowed that dangerous condition to exist.

IV

{¶ 8} The essential elements of any negligence action are a duty of care, a breach of that duty, and an injury directly and proximately resulting therefrom. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 81 Ohio St.3d 677, 680, 1998-Ohio-602, 693 N.E.2d 271. An owner of a premises owes its business invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition and has a duty to warn its invitees of latent or hidden dangers if the owner knows or reasonably should have known of such dangers. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203, 203-204, 480 N.E.2d 474.

{¶ 9} When a danger is open and obvious, however, a landowner owes no duty of care to individuals lawfully on the premises. *Armstrong v. Best Buy Co.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶14, citing *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 233 N.E.2d 589. The rationale for this doctrine is that "the open and obvious nature of the hazard itself serves as a warning. Thus, the owner or occupier may reasonably expect that persons

entering the premises will discover those dangers and take appropriate measure to protect themselves." *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 644, 1992-Ohio-42, 597 N.E.2d 504. "When applicable, the open-and-obvious doctrine obviates the duty to warn and acts as a complete bar to any negligence claims." *Armstrong* at ¶5.

{¶ 10} Where only one conclusion can be drawn from the established facts, the issue of whether a risk was open and obvious may be decided by the court as a matter of law. *Basile v. Marous Bros. Constr.*, Cuyahoga App. No. 86642, 2006-Ohio-2454, ¶17, citing *Klauss v. Marc Glassman, Inc.*, Cuyahoga App. No. 84799, 2005-Ohio-1306. Where reasonable minds could differ as to whether a danger is open and obvious, however, the obviousness of the risk is an issue for the jury to determine. *Carpenter v. Marc Glassman, Inc.* (1997), 124 Ohio App.3d 236, 240, 705 N.E.2d 1281.

{¶ 11} We disagree with Pat Catan's contention that "the circumstances surrounding [Betty's] accident were undisputedly open and obvious." Betty testified that she had never before been to the restroom in that particular Pat Catan's and, based on her experiences with other stall doors, she expected that when she pulled the door it was going to stop at the point where the door locks. She further testified that, prior to walking into the stall, she did not notice that the door stop mechanism was missing.

{¶ 12} Further, the Millers submitted the report of an expert, Richard Kraly, a registered and licensed architect, in which he concluded that "[l]ack of the latch bracket strike plate at the jamb permitted the door to swing freely in both directions including inward which caused [Betty] to lose her balance, fall and sustain injuries."

{¶ 13} On this record, there is a genuine issue of material fact as to whether the lack of a door stop mechanism was an open and obvious danger or an unreasonably dangerous condition that Pat Catan's should have warned its customers about or altogether eliminated. Accordingly, the Millers' assignment of error is well taken.

Judgment reversed; case remanded to trial court for further proceedings consistent with this opinion.

It is ordered that appellants recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

KENNETH A. ROCCO, P.J., and

MELODY J. STEWART, J., CONCUR