STATE OF MICHIGAN

COURT OF APPEALS

ROBERT RICHARDSON and JEAN RICHARDSON,

Plaintiffs-Appellees,

v

ROCKWOOD CENTER, L.L.C.,

Defendant-Appellant,

and

EMILIA A. BARBU and DIANA E. BARBU,

Defendants.

FOR PUBLICATION
April 12, 2007
9:05 a.m.

No. 274135
Wayne Circuit Court
LC No. 05-502369-NI

Official Reported Version

Before: Wilder, P.J., and Sawyer and Davis, JJ.

SAWYER, J.

This is a premises liability action arising from an accident in a parking lot involving a pedestrian and a motor vehicle. Defendant Rockwood Center, L.L.C., (defendant) appeals by leave granted an order of the circuit court that denied its motion for summary disposition, which was predicated on an application of the open and obvious danger doctrine and the assertion of a lack of causation. We reverse and remand.

According to plaintiff Robert Richardson (plaintiff), at the time of the accident, he was leaving a store located in defendant's shopping center. He describes the parking lot area as having traffic lanes that separate the store and the double rows of parking spaces in front of the store. Richardson further testified that as he crossed the traffic lanes and entered the second lane of traffic, which was the outgoing traffic lane, he was struck by a vehicle traveling in that lane driven by defendant Diana Barbu.

Diana Barbu, the driver of the vehicle that struck Richardson, told the police that she did not see Richardson because the sun was in her eyes. She further reported that she braked to slow down before striking Richardson. She knew she had hit someone when she felt a bump at the front of her vehicle.

After the accident, plaintiffs commenced this action against defendant, seeking to recover under a premises liability theory, and against the driver and the owner of the vehicle. Plaintiff Jean Richardson sought recovery under a loss of consortium theory.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). Defendant argued that it was entitled to summary disposition because, under an application of the open and obvious danger doctrine, it owed no duty to plaintiff because no reasonable fact-finder could conclude that the condition of the parking lot involved an unreasonable risk of harm and because there were no special aspects of the parking lot that would remove this matter from the open and obvious danger doctrine. Defendant also argued that it was entitled to summary disposition because the design of the parking lot was not a proximate cause of plaintiff 's injuries.

Plaintiffs argued that the open and obvious danger doctrine did not bar the instant action against defendant because the danger to Richardson of being struck by a moving vehicle where pedestrian invitees were required to negotiate two unmarked and uncontrolled vehicle travel lanes without defendant taking reasonable precautions for invitee safety was both effectively "unavoidable" and also "imposed a uniquely high likelihood of harm or severity of harm."

Opining from the bench, the trial court declined to grant summary disposition on the proximate cause issue, and took the matter of the open and obvious danger doctrine under advisement. It later issued an opinion denying summary disposition on that basis as well. We thereafter granted leave to appeal.

Generally, the owner or possessor of a premises owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). This duty, however, does not generally encompass the removal of open and obvious dangers. An open and obvious danger exists where the dangers are known to the invitees or are so obvious that the invitee might reasonably be expected to discover them, i.e., an average user with ordinary intelligence would have been able to discover the danger and risk presented upon casual inspection. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 5; 649 NW2d 392 (2002); *Joyce, supra* at 238. The focus is on the condition of the premises. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329; 683 NW2d 573 (2004). If the risk of harm remains unreasonable despite the obviousness or despite knowledge of it by the invitee, then the special aspects of the circumstances may be such that the invitor is required to undertake reasonable precautions within a reasonable time to diminish the hazard. *Id.* at 332; *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517; 629 NW2d 384 (2001); *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995) (applying 2 Restatement Torts, 2d, §§ 343 & 343A). Special aspects that serve to remove a condition from the open and obvious danger doctrine are those that "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided . . . ." *Lugo, supra* at 519. The illustrations of special-aspect conditions discussed in *Lugo* were (1) "an unguarded thirty foot deep pit in the middle of a parking lot" resulting in a fall of an extended distance and (2) standing water at the only exit of a commercial building, resulting in the condition being unavoidable because no alternative route is available. *Id.* at 518. "Neither a common condition nor an avoidable condition is uniquely dangerous." *Kenny v Kaatz*

Funeral Home, Inc, 264 Mich App 99, 117; 689 NW2d 737 (2004) (Griffin, J., dissenting), adopted 472 Mich 929; 697 NW2d 526 (2005).

There does not appear to be any published cases dealing with the application of the open and obvious doctrine to parking lot design. Defendant does, however, direct our attention to this Court's decision in *Kirejczyk v Hall*, unpublished opinion per curiam of the Court of Appeals, issued November 5, 2002 (Docket No. 233708), to answer the question whether the hazards associated with a pedestrian moving through a parking lot and across traffic lanes to a store are open and obvious.

Kirejczyk arose from a motor vehicle accident occurring in a parking lot of a Sears store. Slip op at 1.

> Kirejczyk's position is that the parking lot was unreasonably dangerous in its design and layout because of a lack of signs or other traffic controls. A premises possessor generally owes invitees a duty to protect them against an unreasonable risk of harm caused by a dangerous condition on the land. However, this duty does not generally include removing open and obvious dangers. The critical question is whether there are "special aspects" that differentiate an open and obvious condition from "typical open and obvious risks" and thereby create an unreasonable risk of harm. In this case, the condition of the parking lot was open and obvious. Further, it is typical for parking lots outside businesses to lack signs or other traffic controls. Drivers are expected to simply rely on traffic laws and customary practices while driving in such parking lots. Thus, we conclude that the trial court correctly granted summary disposition in favor of Sears because no reasonable factfinder could conclude that the condition of the parking lot involved an unreasonable risk of harm. [Slip op at 1-2 (footnotes omitted).]

Here, as in *Kirejczyk*, the parking lot lacked signs or any traffic control devices or markings. The panel in *Kirejczyk* noted that "it is typical for parking lots outside businesses to lack signs or other traffic controls." Slip op at 2. A common condition is not uniquely dangerous and, therefore, does not give rise to an unreasonable risk of harm. *Kenny, supra.* Further, the hazards posed to pedestrians by motor vehicles moving through parking lots, getting into parking spaces, and backing out of parking spaces is open and obvious upon the most casual inspection by an average pedestrian of ordinary intelligence. The lack of signs or other traffic control devices or markings does not constitute a "special aspect" that would remove this case from an application of the open and obvious danger doctrine.

In sum, a person pushing a shopping cart across a vehicle's path is a rather obvious "sign" that the vehicle should stop and yield to the pedestrian. Equally obvious is that a pedestrian in a parking lot should look both ways before crossing the driving lane to ensure that he or she is not about to be struck by a vehicle. Although perhaps more relevant to the issue of causation, we would also note the very basic premise that a driver who cannot see should stop the vehicle. Plaintiff points to no special aspect of this parking lot that prevented him from seeing the moving vehicle, prevented the driver from seeing him, or prevented the driver from stopping her vehicle when she was unable to see. Thus, to the extent that the parking lot presented a danger, that

danger was open and obvious. Accordingly, the trial court erred when it failed to grant summary disposition based on an application of the open and obvious danger doctrine.

Because we conclude that summary disposition should have been granted on the basis of the open and obvious danger doctrine, we need not address the question whether defendant was entitled to summary disposition based on the causation issue as well.

Reversed and remanded with instructions to enter summary disposition in favor of defendant. We do not retain jurisdiction. Defendant may tax costs.

Wilder, P.J., concurred.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder