STATE OF MICHIGAN

COURT OF APPEALS

MARY GAJEWSKI and JOSEPH GAJEWSKI, Plaintiffs-Appellants,	UNPUBLISHED April 25, 2000
v	No. 210646 Oakland Circuit Court
SERVICE TOWING, INC., Defendant-Appellee.	LC No. 97-543492-NO

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Mary Gajewski fell on the wooden steps leading to defendant's office and sustained injuries. Plaintiffs filed suit alleging that defendant negligently failed to maintain the property in a reasonably safe condition. In her deposition, Mary Gajewski acknowledged that she observed small puddles of water on the steps from an earlier rainfall, and that she successfully negotiated the steps before entering the office.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no genuine issue of fact existed as to whether the steps presented an unreasonable risk of harm, and that plaintiffs could not establish a causal connection between Mary Gajewski's injuries and any breach of duty. The trial court granted the motion, finding that plaintiffs did not demonstrate that an issue of fact existed as to whether the steps presented an unreasonable risk of harm.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v*

K-Mart Corp, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. A possessor of land may be held liable for injuries resulting from negligent maintenance of the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If the risk of harm from a dangerous condition remains unreasonable, in spite of the fact that it is open and obvious or that the invitee has knowledge of it, the possessor of land must take reasonable care. If there is something unusual about steps or varying floor levels due to their character, their location, or other conditions, the duty of the possessor of land to take reasonable care remains intact. *Bertrand, supra* at 611, 617.

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Mary Gajewski acknowledged that she observed small puddles at various locations on defendant's steps. Water did not cover the entire surface of the steps. She successfully climbed the steps to the office, in spite of the presence of the puddles. Steps are encountered as an everyday occurrence, and a reasonably prudent person will watch where he or she is going and will take appropriate care for his or her own safety. *Id*. at 616. The instant case is not one in which the location, character, or condition of the steps was such that even a reasonably prudent person could not protect himself or herself from harm. *Id*. at 617.

Moreover, although Mary Gajewski opined that the presence of water on the steps caused her to fall, she could not so state with any degree of certainty. To establish causation, a plaintiff must prove that it is more likely than not that but for the defendant's breach of duty, the injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994). The possibility that a breach of duty by defendant caused Mary Gajewski to sustain injuries is not sufficient to establish causation. *Ritter, supra*. The trial court properly decided the issue as one of law and granted summary disposition. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Jeffrey G. Collins
/s/ Janet T. Neff
/s/ Michael R. Smolenski