STATE OF MICHIGAN

COURT OF APPEALS

JUDY TITKO,

Plaintiff-Appellant,

v

WILLIAM BODEN and MARY BODEN,

Defendants-Appellees.

UNPUBLISHED
December 15, 2000

No. 214578
Monroe Circuit Court
LC No. 97-006562-NO

Before: Saad, P.J., and White, and Hoeksta, JJ.

PER CURIAM.

Plaintiff, who slipped and fell on stairs in defendants' home, appeals as of right the circuit court's grant of defendants' motion for summary disposition pursuant to MCR 2.116 (C)(10), and its denial of plaintiff's motion for rehearing. We affirm.

In general, to establish a prima facie case of negligence, a plaintiff must present sufficient evidence that: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the defendant's breach was a proximate cause of the plaintiff's injuries; and (4) the plaintiff suffered damages. *Latham v National Car Rental Systems, Inc*, 239 Mich App 330, 340; 608 NW2d 66 (2000). "A licensee is a person who is privileged to enter the land of another by virtue of the possessor's consent, without more." *Wymer v Holmes*, 429 Mich 66, 71, n 1; 412 NW2d 213 (1987). The parties agree that plaintiff was a social guest of defendants and a licensee at the time of her fall. A possessor of land is liable for injuries to a licensee caused by a condition on the land if the possessor has reason to know of the condition, should realize that it involves an unreasonable risk of harm, should expect that licensees will not discover the danger, and fails to exercise reasonable care either to make the condition safe or to warn licensees of the danger. *White v Badalamenti*, 200 Mich App 434, 437; 505 NW2d 8 (1993). "The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Wymer, supra* at 71, n 1.

First, plaintiff contends that defendants knew that their stairway constituted an unreasonable risk of harm. In support, plaintiff proffered below an affidavit from her son in which he stated that around 1988, he fell on the same stairway that plaintiff fell on; and that at that time he discussed with defendants the dangerous nature of the stairs and that defendants

admitted that the stairs were steep and needed a handrail.[1] Plaintiff testified that immediately after falling she told Mary Boden that she wished there had been a handrail. Also, plaintiff testified that Mary Boden had fallen on the same stairway, on a different landing.[2]

That there were two prior falls on defendants' stairway over a period of many years[3] did not put defendants on notice that their stairway presented an unreasonable risk of harm. See *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995). Although *Bertrand* is a premises liability case involving a landowner's duty regarding invitees, it is helpful in assessing whether the stairs in the instant case constituted an unreasonable risk of harm. The *Bertrand* Court noted:

> [B]ecause 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. Under ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary steps "foolproof." Therefore, the risk of harm is not unreasonable. However, where there is something unusual about the steps, because of their "character, location, or surrounding conditions," then the duty of the possessor of land to exercise reasonable care remains. [*Bertrand, supra* at 616-617.]

There was no evidence that defendants had knowledge that their stairs were other than ordinary. That defendants, as a courtesy, generally warned their guests to be careful on the stairs and on leaving their house does not establish such knowledge.

Plaintiff also proffered an affidavit from her expert, Karl Greimel, a licensed architect, to support her claim that defendants' stairway involved an unreasonable risk of harm. Greimel's affidavit states that he inspected defendants' stairway in January 1998 (several years after plaintiff's fall), and found six violations of the Building Officials & Code Administrators International, Inc., building code (BOCA). The affidavit states that defendants' stairway was also unsafe because it was covered with deep pile carpeting which failed to distinguish the stair nosings, creating soft and unsure footing. Greimel's affidavit also stated that these violations directly led to plaintiff's fall. However, the stairway was grandfathered under the 1991 Uniform Building Code unless its use was "dangerous to life," of which there was no showing.

The affidavits of Greimel and plaintiff's son do not raise a question of fact regarding whether defendants' stairs involved an unreasonable risk of harm or whether, at the time of plaintiff's fall, defendants knew that their stairway was unreasonably dangerous. The affidavits

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[1] Defendants denied knowledge of the son's fall.

[2] However, the section of the stairway involved in Mary Boden's fall was covered by different carpeting and had a handrail, and Boden testified she fell because she was rushing.

[3] The home was built around the 1940's. Mary Boden had lived there since 1950. Defendants had lived in the home together since 1963. The original stairway was not altered by defendants.

do not show that at the time of plaintiff's fall defendants knew that, by the stairway's character, location or surrounding conditions, a reasonably prudent person would not be likely to expect a step or see it. *Garret v WS Butterfield Theatres*, 261 Mich 262, 263-264; 246 NW 57 (1933).

Plaintiff also argues that knowledge of the hazardous condition of the stairway should be imputed to defendants, since defendants created the hazard by installing deep-pile carpeting. Plaintiff relies on *Anderson v Merkel*, 393 Mich 603; 227 NW2d 554 (1975), and *Hulett v Great Atlantic & Pacific Tea Co*, 299 Mich 59; 299 NW 807 (1941). However, creation of a condition imputes knowledge of the existence of the condition. It does not, standing alone, impute knowledge that the condition is unreasonably dangerous. There was no evidence that defendants' knowledge that the carpet posed a hazard was any greater than plaintiff's.

Moreover, a possessor of premises is only liable for an unreasonably dangerous condition where the possessor should expect that the licensee will not discover the dangers involved. *White*, *supra* at 437. Thus, assuming that defendants had notice of the dangerous condition of the stairway, the circuit court did not err in granting summary disposition because there was uncontradicted testimony that plaintiff knew or had reason to know of the dangers involved. Plaintiff was familiar with defendants' stairway since she had visited defendants approximately eight to ten times in ten years and used the stairway in question on each visit.

We need not address plaintiff's argument regarding the open and obvious danger doctrine because plaintiff failed to establish a genuine issue of material fact regarding a breach of duty.

Affirmed.

/s/ Henry William Saad
/s/ Helene N. White
/s/ Joel P. Hoekstra