STATE OF MICHIGAN

COURT OF APPEALS

LARRY FIRMAN and TERESA FIRMAN, Individually and as Next Friends of SHASTA FIRMAN and BRANDON FIRMAN, Minors,

Plaintiffs-Appellants,

v

LES STANFORD PONTIAC-OLDSMOBILE-CADILLAC-MAZDA, INC.,

Defendant-Appellee.

UNPUBLISHED
December 14, 2001

No. 226225
Jackson Circuit Court
LC No. 99-091704

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Plaintiffs appeal as of right 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).

Plaintiff Larry Firman [Firman] went to defendant's place of business on a day when heavy rain was falling. The large bay doors to defendant's service department were open when Firman arrived on the premises. Firman entered defendant's building through one of the bay doors. The concrete floor of the service department was wet. Firman slipped, fell to the floor, and sustained a back injury.

Plaintiffs filed suit alleging that defendant failed to maintain its premises in a reasonably safe condition, and failed to warn of the dangerous and unsafe condition. The complaint also alleged loss of consortium. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it had no duty to warn Firman of the wet floor because the condition was open and obvious. The trial court granted the motion, finding that an issue of fact did not exist as to whether the condition was open and obvious.

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).

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* Circuit judge, sitting on the Court of Appeals by assignment.

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. *Bertrand*, *supra*, 611.

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. The undisputed evidence showed that the floor on which Firman slipped was large, and that its condition was not obstructed from his view. The fact that Firman claims that he did not notice the wet condition of the floor is irrelevant. *Novotney*, *supra* at 475. It is reasonable to conclude that Firman would not have been injured had he been watching the area in which he was walking. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Plaintiffs did not come forward with sufficient evidence to create a question of fact as to whether an average person with ordinary intelligence would have discovered the condition upon casual inspection. The trial court did not err in concluding that the wet floor was an open and obvious condition.

Furthermore, we find plaintiffs' argument that even assuming the wet floor constituted an open and obvious danger it still presented an unreasonable risk of harm is without merit. Plaintiffs' assertion is based primarily on the fact that the floor of defendant's service department was concrete and had become wet because the service bay doors were allowed to remain open during the storm. Had Firman simply watched his step, any risk of harm would have been obviated. See *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360-361; 561 NW2d 500 (1997). Summary disposition was proper.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post