STATE OF MICHIGAN

COURT OF APPEALS

MARJORIE J. FINKBEINER and RONALD FINKBEINER, Plaintiffs-Appellants, v BINGO PARTNERS, INC., Defendant-Appellee.	UNPUBLISHED May 17, 2002 No. 230802 Genesee Circuit Court LC No. 99-066005-NO

Before: Markey, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiffs[1] appeal as of right from the trial court's order granting summary disposition for defendant in this premises liability case. We affirm.

Plaintiff left defendant's bingo establishment on July 11, 1998 at approximately 10:15 p.m. As plaintiff walked toward her brother's awaiting car, she tripped and fell over a concrete parking block in defendant's parking lot. Plaintiff filed this premise liability action, alleging injuries to her shoulder, arm and hip as a result of defendant's failure to maintain and inspect its premises and failure to warn of dangers on the premises. Defendant moved for summary disposition, arguing that the parking block was open and obvious and, therefore, defendant owed no duty to plaintiff with respect to the block. The trial court ruled that the parking block was open and obvious and granted summary disposition for defendant.

We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In reviewing a motion under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). All reasonable inferences are resolved in the nonmoving party's favor. *Hampton v Waste Mgt of MI, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

[1] Ronald Finkbeiner brought a consortium claim arising from his wife's alleged injuries. The remainder of this opinion will refer to Marjorie Finkbeiner as "plaintiff."

On appeal, plaintiff argues that the parking block was not open and obvious due to poor lighting and placement of the block and that the trial court erred in granting summary disposition where defendant had a duty to protect plaintiff from the unreasonable risk associated with the block. We disagree.

Generally, an invitor owes a duty to his invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). That duty involves inspecting the premises and making any necessary repairs or warning of discovered hazards. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). The duty does not extend to conditions from which an unreasonable risk cannot be anticipated or to dangers that are known to an invitee or so obvious that an invitee can be expected to discover them himself. *Lugo, supra* at 516, quoting *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). An "open and obvious" danger is one that a person of ordinary intelligence would discover upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). However, even in the event that the danger is open and obvious, if "special aspects" of a condition make an open and obvious risk unreasonably dangerous, the possessor has a duty to take reasonable precautions to protect invitees from the risk. *Lugo, supra* at 517, citing *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995).

Here, plaintiff presented evidence that the parking block on which she tripped was placed at the head of one of the parking spaces near the entrance to defendant's building. Photographs included in the lower court record suggest the block in question is a light color and does not lay completely flat against the ground, but instead is tilted slightly upward. The photographs further suggest that the block is not directly centered at the head of the parking space it primarily occupies, resulting in a portion of the block laying in the adjacent parking space. Plaintiff claims to have tripped over the block while attempting to walk between two parked cars.

Plaintiff's brother and sister-in-law were present at the time of the fall and testified at deposition that the lights on the street adjacent to defendant's building, the light on defendant's sign and the lights attached to defendant's building were all on. However, both witnesses claimed those lights did not adequately illuminate the parking lot.

Despite plaintiff's claim of poor lighting, at deposition, when asked whether she could have seen the block had she looked down, plaintiff admitted: "I suppose I could have, but I don't remember seeing it."[2] Plaintiff acknowledges that a portion of the block lay directly in her path

[2] We note that portions of plaintiff's deposition testimony are unclear as to whether she was actually aware of the block prior to her fall. Plaintiff's testimony includes:

> *Q*. Do you believe you were in the process of lifting your foot over this block?
>
> *A*. Yes. I actually was lifting my foot, because I only caught it with my right foot. But I must not have – obviously, I didn't lift it high enough.
>
> *Q*. So, apparently, it's something you were aware of, but you just didn't lift it high enough?

(continued…)

between the cars. Under these circumstances, we conclude as a matter of law that the danger of tripping on the light-colored block, which lay unhidden in plaintiff's path, was open and obvious. The question then becomes whether there was any "special aspect" associated with the block that made it unreasonably dangerous. See *Lugo, supra*. We conclude there was not.

The alleged poor lighting and off-center placement of the block are not such special aspects given plaintiff's acknowledgment that she could have seen the block had she looked down while she was walking. Also, the fact that the block was tilted slightly upward did not make the block unreasonably dangerous. According to the photographs, the side of the block facing the parking space was tilted upward approximately two to three inches. Despite that tilt, we cannot conclude that the condition gave rise to a uniquely high likelihood of harm or severity of harm. *Lugo, supra* at 518-520. The parking block in question is not so different from the type regularly encountered in a parking lot. Its irregularity did not render it unreasonably dangerous. Under these circumstances, the trial court properly granted defendant summary disposition based on the open and obvious nature of the risk.[3]

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Brian K. Zahra

(…continued)

A. Right. I don't remember seeing it, but I – but I know I just hit it with my toe.

[3] Given our conclusion, we reject plaintiff's further argument that the trial court erred in denying her motion for reconsideration.