STATE OF MICHIGAN

COURT OF APPEALS

JOHN BLAIR and JUDY BLAIR,

Plaintiffs-Appellants,

v

NORMAN HOVEY and JOAN HOVEY,

Defendants-Appellees.

UNPUBLISHED
May 21, 2002

No. 225142
Wayne Circuit Court
LC No. 99-901068-NO

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

In this slip and fall action, plaintiffs appeal as of right from the trial court's order granting summary disposition to defendants. We affirm.

In the present case, plaintiff John Blair slipped and fell while inside defendants' home.[1] The record indicates that plaintiff tracked water into defendants' house, in the form of melted snow, while moving a hot water heater. Plaintiff's fall was apparently caused by the combination of his own wet shoes, melted snow water on the linoleum floor, and the weight of the hot water heater. The trial court found, as a factual matter, that a reasonable jury could determine that melted snow water on the linoleum floor caused plaintiff's fall.[2]

Plaintiff brought a negligence action against defendants, alleging that defendants had failed to maintain their premises in a reasonably safe condition, and had failed to inspect and repair defective conditions which would create an unreasonable risk of harm to persons on their premises. Specifically, plaintiff alleged that defendants breached their legal duty by failing to clear ice and snow from the driveway and walkway leading up to the house, in order to prevent plaintiff from tracking melted snow inside. Further, plaintiff alleged that defendants breached their duty by removing a rug or mat from inside the front door, because the amount of water that plaintiff tracked into the house could have been reduced if a rug had been present there. Finally, plaintiff alleged that defendants breached their duty by failing to notice and remove the water that accumulated on the linoleum floor at the top of the stairs, the location where plaintiff fell.

[1] Because Judy Blair's claim is solely derivative of her husband's claim, we will refer to John Blair as plaintiff.

[2] Because defendants did not appeal from that decision, proximate cause is not at issue on appeal.

The trial court granted defendants' summary disposition, ruling that defendants did not breach a legal duty to plaintiff, and that no reasonable jury could find defendants negligent based on the facts of this case. We affirm.

We review a trial court's decision regarding a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In ruling on a motion for summary disposition under MCR 2.116(C)(10), a court must consider the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties, in the light most favorable to the non-moving party. *Id*. The trial court may grant the motion for summary disposition if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id*.

In order to establish a prima facie case of negligence, a plaintiff must introduce evidence sufficient to establish 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. *Spikes v Banks*, 231 Mich App 341, 355; 586 NW2d 106 (1998). The duty owed by a landowner to another person for injuries occurring on the landowner's property depends on the status of the injured party at the time of the accident. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). The injured person is considered either an invitee, a licensee, or a trespasser, and the landowner's duty varies according to that status. *Id*.

A landowner owes a licensee a "duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Id*. In contrast, a landowner owes an invitee both a duty "to warn the invitee of any known dangers" and a duty to "make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Id*. at 596-597. Normally, whether a defendant owes an actionable legal duty to a plaintiff is a question of law. *Spikes*, *supra* at 355. However, where a determination of duty depends upon factual findings, then the question is one for the jury. *Pippin v Atallah*, 245 Mich App 136, 141; 626 NW2d 911 (2001); *Holland v Liedel*, 197 Mich App 60, 65; 494 NW2d 772 (1992).

Plaintiff first argues that the trial court committed error requiring reversal when it granted defendants' motion for summary disposition without first ruling on plaintiff's legal status at the time of his injury. Below, the parties disputed whether plaintiff was an invitee or a licensee. On appeal, plaintiff argues that the facts regarding his legal status were in dispute and that the issue should have been left to the jury. We conclude that summary disposition was appropriate even if defendants owed plaintiff the higher duty of care accorded to an invitee. Therefore, we conclude that the trial court's failure to reach this issue is harmless.

Plaintiff next argues that defendants breached their legal duty by failing to shovel accumulated snow from the driveway and the walkway between the driveway and the front door of defendants' home. However, plaintiff did not slip and fall outside of defendants' home because of accumulated snow, or because of ice or other hazards hidden beneath the snow. Plaintiff slipped and fell *inside* defendants' home. Because plaintiff alleged that his fall was caused by an accumulation of water on defendants' linoleum floor, we conclude that an analysis

of defendants' duty to plaintiff must focus on the conditions inside defendants' home, rather than the conditions outside.

Plaintiff next argues that defendants breached their legal duty by removing a rug or mat that had been located inside the front door of defendants' home. Below, defendants testified that a rug or mat was in place just inside the front door, and that they did not remove the rug during plaintiff's visit. In contrast, plaintiff testified that he did not recall seeing a rug in place just inside the front door. However, regardless of this factual dispute, we note that plaintiff did not slip and fall just inside defendants' front door. Rather, plaintiff slipped and fell on the linoleum surface at the top of defendants' basement stairs. Therefore, whether defendants did or did not remove a rug in a location where plaintiff did not fall is not dispositive of the issues in this case.[3]

Plaintiff next argues that defendants breached their duty by failing to take affirmative steps to make sure that the linoleum floor at the top of the basement stairs was not dangerously slippery. Because we conclude that slippery conditions involved in the present case were open and obvious, we conclude that the trial court properly granted summary disposition to defendants. A landowner's duty to one who is injured on his premises is limited by the open and obvious danger doctrine. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 610; 537 NW2d 185 (1995). "[I]f the particular activity or condition creates a risk of harm *only* because the invitee does not discover the condition or realize its danger, then the open and obvious doctrine will cut off liability if the invitee should have discovered the condition and realized the danger." *Id*. at 611 (emphasis in original). However, "if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions." *Id*.

We conclude that the risk of slipping and falling on a linoleum floor while wearing wet shoes is open and obvious, and that plaintiff should have discovered the condition and realized the danger. Further, we do not believe that this is the type of case where defendants owed plaintiff a duty to anticipate the potential for harm despite its open and obvious nature. We do not believe that defendants should have been reasonably expected to follow plaintiff throughout the house and warn him that he was tracking melted snow water inside. Further, we do not believe that defendants should have been reasonably expected to dry the bottom of plaintiff's shoes before he stepped onto the linoleum at the top of the basement stairs. Even if plaintiff slipped and fell due to a puddle of water that had already accumulated on the linoleum before he stepped there, rather than falling due to the water actually on the soles of his shoes, we do not conclude that the risk of harm to plaintiff remained unreasonable, despite its obviousness or

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[3] Furthermore, we note the testimony given below regarding the absence of a rug or mat on the linoleum at the top of the basement stairs. Mr. Oatman, whom plaintiff was allegedly assisting with the repair of the hot water heater, testified that he would have removed any rug located on the linoleum at the top of the basement stairs, because a rug located in that area would have itself created a slip and fall hazard. Plaintiff does not allege that defendants removed a rug or mat from the linoleum at the top of the basement stairs.

despite plaintiff's knowledge of that condition. Therefore, we conclude that defendants were entitled to summary disposition under the open and obvious danger doctrine.

Affirmed.

/s/ Michael J. Talbot
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder