

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND TERRY HOWELL,
Plaintiff-Appellant,

UNPUBLISHED
August 2, 2002

v

PUBLIC LUMBER COMPANY,
Defendant-Appellee.

No. 231373
Wayne Circuit Court
LC No. 99-936704-NO

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals 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 was shopping on defendant's premises when a car began traveling in reverse at a high rate of speed through the warehouse bay area. The car was hitting objects and propelling them through the warehouse. Plaintiff tried unsuccessfully to avoid being struck by the car. The car had been backing into the entrance of the warehouse to pick up materials. The driver was not ticketed or charged with a criminal offense.

Plaintiff filed suit alleging that defendant and non-participating defendant John Doe, an employee whose true identity was unknown, negligently failed to maintain the premises in a reasonably safe condition and to warn him of the presence of the car in the warehouse. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). Defendant relied on *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495; 418 NW2d 381 (1988), for the proposition that an owner of land has no duty to protect invitees from conditions from which an unreasonable risk of harm cannot be anticipated. The trial court granted the motion.

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).

Duty is a legally recognized obligation to conform to a particular standard of conduct towards another. *Howe v Detroit Free Press, Inc.*, 219 Mich App 150, 155; 555 NW2d 738 (1996), *aff'd* 457 Mich 871 (1998). In determining whether a duty should be imposed, the court should balance the societal interests involved, the foreseeability of the harm, the severity of the risk, the closeness of connection between the conduct and the injury, the moral blame attached to the conduct, the prevention of future harm, the burden on the defendant, the likelihood of occurrence, and the relationship between the parties. *Foster v Cone-Blanchard Machine Co.*, 460 Mich 696, 707; 597 NW2d 506 (1999). Whether a duty exists is a question of law for the court. *Harts v Farmers Ins Exchange*, 461 Mich 1, 10; 597 NW2d 47 (1999).

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. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 609; 537 NW2d 185 (1995). 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, however, 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. *Id.*; *Williams, supra* at 500.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree. Defendant owed plaintiff, a business invitee, a duty to exercise reasonable care to protect him from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand, supra*. This duty does not extend to a condition from which an unreasonable risk of harm cannot be anticipated. *Williams, supra*. The specific question before the *Williams* Court was whether "a merchant's duty to exercise reasonable care includes providing armed, visible security guards to protect invitees from the criminal acts of third parties." *Id.* at 500. The *Williams* Court answered this question in the negative, and in doing so relied on the general principle that an owner of land does not have the duty to protect invitees from a condition from which an unreasonable risk of harm cannot be anticipated. *Id.* at 502.

Here, the trial court did not err by relying on *Williams* for this general principle. The evidence showed that the car did not stop as directed, but instead traveled in reverse and at a high rate of speed for more than one hundred feet in defendant's warehouse bay area. Vehicles were not permitted to drive in the interior of the warehouse as a matter of course. The car collided with machinery and lumber, and sent debris flying in all directions. Plaintiff admittedly paid no attention to the car as he descended the stairs, and only at the last minute looked at the car and tried unsuccessfully to avoid it. The harm created by the driver's unauthorized conduct was not foreseeable. The trial court correctly determined that because the particular condition presented by the facts was one from which an unreasonable risk of harm could not be anticipated, defendant did not owe a duty to plaintiff. *Foster, supra*; *Bertrand, supra*; *Williams, supra* at 502. Therefore, summary disposition was proper.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra