STATE OF MICHIGAN

COURT OF APPEALS

PAULINE EUBANKS,

Plaintiff-Appellant,

v

PHILLIP M. SMITH and ALYASHIA SMITH,

Defendants-Appellees.

UNPUBLISHED
December 2, 2003

No. 241313
Oakland Circuit Court
LC No. 01-029052-NO

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was a guest in defendants' home. As plaintiff, who was eighty-three years old at the time, stepped onto the front porch to leave defendants' home, she noticed a mat on the porch and children's toys scattered about the porch. Plaintiff stepped to the side to avoid the toys, but nevertheless stepped on a toy and fell off the porch, sustaining injuries.

Plaintiff filed suit alleging that defendants breached their duty to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10). They argued that plaintiff was on the premises as a licensee, and that she could not show a breach of duty because she observed the mat and the toys on the porch. In response plaintiff acknowledged that a social guest is a licensee, but argued that a question of fact existed as to whether the toy on which she slipped was obscured by the mat or was in a location in which it could not be easily observed. The trial court granted defendants' motion, finding that the condition of the porch was open and obvious.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

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. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A social guest is a licensee. A landowner owes a licensee a duty to warn of dangerous conditions on the land of which the owner knows or has reason to know if the licensee does not know or have reason to know of the conditions. A landowner does not owe a licensee a duty to inspect the premises or to make the premises safe for the licensee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 612; 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). A possessor of land has no duty to take steps to safeguard a licensee from an open and obvious danger. *Pippin v Atallah*, 245 Mich App 136, 142; 626 NW2d 911 (2001). However, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect against the risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp Inc*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm the trial court's decision. It is undisputed that a social guest is a licensee. *Stitt*, *supra*. Defendants owed plaintiff a duty to warn of hidden dangers on the premises of which they knew or had reason to know if plaintiff did not know or have reason to know of the dangers. Defendants did not have a duty to inspect the premises or to take affirmative steps to make the premises safe for plaintiff, and had no duty to safeguard plaintiff from an open and obvious danger. *Pippin*, *supra*. In her deposition plaintiff acknowledged that she saw the mat and the toys on defendants' porch. The fact that plaintiff claims that she did not see a particular toy on which she might have slipped is irrelevant. *Novotney*, *supra* at 477.

Plaintiff's argument that even if the condition of the porch was open and obvious it still presented an unreasonable risk of harm is without merit. She stated that she saw the mat and the toys on the porch. Plaintiff failed to demonstrate the existence of any special aspect that made the porch and the toys visibly present unreasonably dangerous in spite of its open and obvious nature. *Lugo*, *supra*.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly