

STATE OF MICHIGAN
COURT OF APPEALS

FATEN YOUSIF,

Plaintiff-Appellant,

v

WALLED MONA,

Defendant-Appellee.

UNPUBLISHED

June 8, 2004

No. 246680

Macomb Circuit Court

LC No. 02-001903-NO

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this premises liability action. We reverse and remand.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also the depositions, affidavits, admissions, and other documentary evidence, MCR 2.116(G)(5), and must view the evidence in the light most favorable to the party opposing the motion. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is appropriate only if the opposing party fails to present evidence establishing the existence of a material factual dispute. *Id.* at 454-455.

The duty owed by a landowner to a visitor depends on whether the visitor is an invitee, a licensee, or a trespasser. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). "[I]n invitee status must be founded on a commercial purpose for visiting the owner's premises." *Id.* at 607. Plaintiff was visiting defendant's home for a family function when she fell down a stairway after allegedly catching her heel on a loose carpet thread loop on a landing at the top of the stairway. Defendant's home was not held open for a commercial purpose and thus plaintiff, as a social guest, was a licensee. *Taylor v Laban*, 241 Mich App 449, 453; 616 NW2d 229 (2000).

"Ordinarily, a possessor owes at least a marginal duty of care to his licensees." *Altairi v Alhaj*, 235 Mich App 626, 634; 599 NW2d 537 (1999). A landowner does not have a duty of inspection or affirmative care to make the premises safe for the licensee's visit. *Stitt, supra* at 596; *Burnett v Bruner*, 247 Mich App 365, 373, 376; 636 NW2d 773 (2001). He "owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to

know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger or the risk involved.” *Kosmalski v St John’s Lutheran Church*, __ Mich App __; __ NW2d __ (2004), slip op at 6. The landowner “has no obligation to take any steps to safeguard licensees from conditions that are open and obvious.” *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001).

Plaintiff’s claim on appeal is that the trial court erred in granting defendant’s motion because there existed genuine issues of fact regarding the open and obvious nature of the defect, regarding whether the defect presented an unreasonable risk of harm about which defendant knew or should have known, and regarding whether plaintiff herself did not know or have reason to know of the defect or the risk of harm it presented.

The evidence suggested that defendant was aware of the particular loose thread loop at issue¹ and that a visitor to his home may not have been aware of such a thread upon casual inspection. We conclude that a genuine, material, factual dispute existed regarding whether such a loose carpet loop located on a landing above a flight of stairs created an unreasonable risk of harm of which defendant was aware or should have been aware and of which plaintiff was not aware. Consequently, defendant’s motion for summary disposition should have been denied. *Kosmalski*, *supra* at 6.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter

¹ In his appellate brief, defendant essentially concedes that he was aware of the thread but argues that the thread posed no appreciable danger. We conclude, based on the circumstances, that a genuine issue of material fact existed regarding whether defendant should have been aware of the danger the thread posed.