STATE OF MICHIGAN

COURT OF APPEALS

LINDA LEONARD,

Plaintiff-Appellant,

v

HARTFIELD ENTERPRISES, INC., d/b/a HARTFIELD LANES,

Defendant-Appellee.

UNPUBLISHED
November 18, 2004

No. 249381
Oakland Circuit Court
LC No. 2002-042397-NO

Before: Cavanagh, P.J., and Kelly and H Hood*, JJ.

MEMORANDUM.

Plaintiff appeals as of right an order granting defendant summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

On November 17, 2000, at approximately 8:00 p.m., plaintiff and her husband arrived at defendant's bowling establishment where they met a group of eight to ten people to celebrate a friend's birthday. The group had bowled several frames on the lane before plaintiff arrived. Plaintiff approached the lane, wearing her own bowling shoes, and carrying her own bowling ball. Plaintiff slipped and fell, injuring her left elbow and arm.

Upon notification of plaintiff's fall, defendant's general manager completed an incident report. Although Plaintiff attributed her fall to an oily or waxy substance on the lane approach, the general manager did not feel or see any unusual substance and did not order that the area be cleaned. Plaintiff's friends continued to bowl in the same lane without incident after plaintiff was injured.

Plaintiff contends that the trial court erred in granting defendant summary disposition. We review de novo a trial court's decision on a motion for summary disposition. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). When reviewing a decision pursuant to MCR 2.116(C)(10), "we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id*. Summary disposition is appropriately granted, "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

"To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000) (footnote omitted). The duty owed by a property owner to a visitor is dependent on the status of the visitor, and a person who enters another's property for commercial or business purposes is considered an invitee. *O'Donnell v Garasic*, 259 Mich App 569, 573; 676 NW2d 213 (2003). A premises owner owes to an invitee a duty of reasonable care from unreasonable risks of harm caused by dangerous conditions on the property. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 328; 683 NW2d 573 (2004). An owner is liable for an injury resulting from a dangerous condition on the premises if the condition was caused by the "active negligence" of the defendant or its employees, or the defendant or its employees either knew of the condition or should have known about the condition. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). Notice may be inferred from evidence that the dangerous condition existed for such a duration of time in which a reasonably prudent owner would have discovered the hazard. *Id*.

Plaintiff argues that the trial court erred by failing to consider as evidence the presumption that the maintenance records that defendant "destroyed" after the trial commenced should be construed to show that defendant failed to inspect and clean the lane approach area on the day of plaintiff's injury. There was evidence that a former employee with no connection to the events in question took the records upon leaving his employ with defendant. Immediately after plaintiff's fall, defendant's general manager prepared an incident report detailing the circumstances surrounding plaintiff's injury and identifying the time of the last inspection of the lane approach area and the name of the employee who performed the inspection. Given the trial court's ruling that plaintiff's claim was speculative, we can infer that the trial court found that defendant had a reasonable excuse for failing to produce the maintenance records and that such records would have contained cumulative information that was present in the incident report. Therefore, we hold that the trial court did not err in refusing to apply the presumption.

Plaintiff also argues that the trial court erred in finding that the evidence as a whole was insufficient to sustain plaintiff's claim. There was no evidence that an unsafe condition on the lane approach was the result of the negligence of one of defendant's employees, that defendant was aware of the alleged dangerous condition, or that defendant should have been aware of the alleged dangerous condition. Plaintiff was uncertain of the exact substance that caused her to slip and fall. While wax or oil on the approach area could have caused plaintiff to fall, it is also possible that plaintiff could have fallen from a substance on the bottom of her bowling shoes or from crossing the foul line onto the oily or waxy lane. Specifically, plaintiff failed to prove that the slippery substance had been on the lane approach for a time period long enough to require defendant's employees to discover it. The incident report indicated that the lane approach areas were inspected and cleaned at approximately 4:00 p.m., and plaintiff's accident occurred at approximately 8:00 p.m. There was additional evidence that an employee cleaned the approach area a second time shortly before plaintiff fell, and before and after plaintiff's fall, plaintiff's friends bowled in the same area without incident. There must exist more than the mere possibility that defendant's action or inaction caused plaintiff's injury. See *Latham v Nat'l Car Rental Sys*, 239 Mich App 330, 342; 608 NW2d 66 (2000).

Despite the arguably speculative nature of plaintiff's claim, we find that there exists a genuine issue of material fact. Plaintiff's friend testified during her deposition that plaintiff

slipped "well before," "roughly a couple feet" before the foul line. Another bowler, who was using the lane adjacent to the lane plaintiff used, testified that plaintiff had stepped over the foul line onto the lane before she fell. Plaintiff denied having crossed the foul line and maintained that she fell on the lane approach. Because the lane itself is oiled or conditioned, and the lane approach is not, the location of plaintiff's fall is material. There exists a genuine issue of material fact about whether plaintiff slipped and fell on the lane approach or the lane itself, and we hold that the trial court erred in granting defendant summary disposition. We reverse and remand to the trial court for further proceedings.

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

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Harold Hood