STATE OF MICHIGAN

COURT OF APPEALS

SAMUEL J. MAY,

Plaintiff-Appellant,

V

BLARNEY CASTLE OIL COMPANY, d/b/a PLEASANT VIEW EASY MART,

Defendant-Appellee.

UNPUBLISHED
December 21, 2004

No. 249354
Emmet Circuit Court
LC No. 02-007204-NO

Before: Meter, P.J., and Wilder and Schuette.

PER CURIAM.

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

Plaintiff, an employee of a landscaping company hired to clear snow from defendant's premises, fell to the ground from a platform erected at the rear of defendant's building. The platform, which held refrigeration equipment, was located ten to twelve feet above the ground. It was protected on three sides by two guardrails and the equipment, but one side was left open to allow access to the equipment. Plaintiff finished shoveling snow off the platform, and then began walking backward toward the open end. He slipped off the open end and fell to the ground, sustaining injuries.

Plaintiff filed suit alleging that defendant negligently failed to maintain the premises in a safe condition and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it owed no duty to warn plaintiff because the condition was open and obvious, and that no special aspects of the condition made it unreasonably dangerous in spite of its open and obvious nature. The trial court granted the motion, finding that the condition was open and obvious, and that defendant should not have foreseen that contractors would not take reasonable care for their own safety.

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 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. The duty to protect an invitee does not 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. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. 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). 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 an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

We affirm. The danger presented by the platform was open and obvious. *Novotney, supra*. Moreover, plaintiff's argument that the platform presented an unreasonable risk of harm in spite of its open and obvious nature is without merit. The platform, unlike the porch in *Woodbury v Bruckner (On Remand)*, 248 Mich App 684; 650 NW2d 343 (2001), was enclosed on three sides by two guardrails and refrigeration equipment, and was not designed for casual use by occupants of the building to which it was attached. The platform was designed to allow access to the refrigeration equipment stored on it. Defendant would have had no reason to foresee that the only persons who would be on the platform, i.e., equipment maintenance workers or other workers such as plaintiff, would not take necessary precautions to guard against the obvious danger presented by the unguarded side of the platform. *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11, 18-20; 643 NW2d 212 (2002). Plaintiff admitted that after he finished shoveling snow off the platform he simply started walking backward, and misjudged the length of the platform. Plaintiff failed to demonstrate the existence of any special aspect that made the condition of the platform unreasonably dangerous in spite of its open and obvious nature. *Lugo, supra*. Had plaintiff simply watched his step, any risk of harm would have been obviated. *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997). Summary disposition was proper.

Affirmed.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette