STATE OF MICHIGAN

COURT OF APPEALS

JUDITH ANN LAFUENTE,

Plaintiff-Appellant,

v

CHERRY HILL LANES NORTH,

Defendant-Appellee.

UNPUBLISHED
December 21, 2004

No. 249551
Oakland Circuit Court
LC No. 02-041264-NO

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

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

On March 15, 2001, plaintiff entered defendant's premises. As she entered the vestibule, she tried to open the left door of the facility. She thought the left door was locked, so she put a box she had been carrying under her right arm and attempted to open the right door with her left hand. As she tried to open the right door, it was sticking and very hard to open. The door opened abruptly. She fell as she proceeded through the door and suffered a fractured ankle. Plaintiff filed suit to recover for her personal injuries under a negligence theory. The trial court granted defendant's motion for summary disposition and dismissed plaintiff's claims because defendant owed plaintiff no duty to warn or protect plaintiff from for an open and obvious condition.

II. STANDARD OF REVIEW

On appeal, a trial court's decision on a motion for summary judgment is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). This Court will determine whether an issue of material fact existed or whether the moving party was entitled to a judgment as a matter of law. *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). In evaluating a motion brought pursuant to MCR 2.116(C)(10), this Court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the

moving party is entitled to judgment as a matter of law. *Corley v Detroit Board of Education*, 470 Mich 274, 278; 681 NW2d 342 (2004).

III. ANALYSIS

On appeal, plaintiff contends that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because issues of material fact existed and defendant was not entitled to judgment as a matter of law. We disagree.

In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). The "open and obvious doctrine," however, circumscribes this general duty. *Id.* Under most circumstances, a possessor of land is not required to protect an invitee from an open and obvious danger. *Id.* at 517. A condition is open and obvious if it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. *O'Donnell v Garasic*, 259 Mich App 569, 574; 676 NW2d 213 (2003). However, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk. *Lugo, supra*, 464 Mich 519. Special aspects of a condition exist when the open and obvious condition, if not ameliorated or avoided, would create a uniquely high likelihood of harm or severity of harm. *Id.* at 519. The *Lugo* Court referred to an unguarded thirty foot deep pit in the middle of a parking lot as an example of an unreasonably dangerous, open and obvious condition. *Id.* at 518. A uniquely high likelihood of harm emerges when a person cannot effectively avoid the dangerous condition. *Id*. A panel of this Court gave an example of a commercial building with only one exit for the general public, with the floor covered with standing water. *Id.* A customer exiting the store must exit through the standing water, thereby making it unavoidable. *Id.*

Plaintiff contends the defect in the door was not open and obvious. In *Prebenda v Tartaglia*, 245 Mich App 168; 627 NW 2d 610 (2001), a tenant was injured when she attempted to pull open a door in a common hallway when another person pushed the door from the other side, causing her to fall. A panel of this Court affirmed summary disposition in favor of the defendant, holding that there was no dangerous condition on the land. *Id.* at 170. The Court reasoned that the tenant encountered a commonplace and ordinary door. *Id.*

An average person of ordinary intelligence would be able to recognize that a door that sticks will abruptly open when more force is applied to it. Plaintiff acknowledged that pulling a door was an everyday experience and that she had encountered doors like this before. Plaintiff was a regular at the bowling center. Although she had not encountered that particular door before, she acknowledged that there were other similar doors she usually used in the front of the bowling center. We conclude that the condition was open and obvious.

Plaintiff further contends that the open and obvious doctrine is not applicable because special aspects of the door, specifically serrations in the doorjamb, made the door unreasonably dangerous. However, this Court has held there is no unreasonable risk of harm in pulling a door open. *Prebenda, supra*, 245 Mich App 170. The door plaintiff encountered was a part of every

day experience. No special aspect of the door made it unreasonably dangerous.

Affirmed.

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