STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL KOONTZ and LINDA KOONTZ,

Plaintiffs-Appellants,

v

SYBRA, INC., d/b/a ARBY'S ROAST BEEF RESTAURANTS,

Defendant-Appellee.

UNPUBLISHED
July 17, 2008

No. 278658
Oakland Circuit Court
LC No. 2006-076672-NO

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Michael Koontz slipped and fell on debris outside one of defendant's restaurants. The trial court granted defendant's motion for summary disposition, finding that the debris presented an open and obvious hazard for which defendant was not liable. Plaintiffs do not dispute the trial court's determination that the debris was open and obvious. Rather, they contend that the open and obvious doctrine is inapplicable because this is an ordinary negligence case rather than a case of premises liability. We disagree.

Generally, negligence is conduct involving an unreasonable risk of harm. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). To prove negligence, a plaintiff must establish a breach of duty owed by the defendant which is a proximate cause of the plaintiff's injuries. *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). "[A] negligence action may be maintained only if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm." *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). A duty arises from a special relationship between the plaintiff and the defendant such that the plaintiff entrusts himself to the control and protection of the defendant, who thereby assumes a legal obligation to act with due care for the benefit of the plaintiff. *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 8-9; 492 NW2d 472 (1992). Such special relationships include common carrier-passenger, innkeeper-guest, employer-employee, doctor-patient, landlord-tenant, and invitor-invitee. *Id*. at 8; *Graves, supra* at 494.

Premises liability rests on the duty an owner or occupier of land owes to those who enter to protect them from unreasonably dangerous conditions on the land. *Merritt v Nickelson*, 407 Mich 544, 551-552; 287 NW2d 178 (1980). It is "[a] landowner's or landholder's tort liability for conditions or activities on the premises." Black's Law Dictionary (7th ed, 1999). "A premises owner owes, in general, 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." *Kenny v Kaatz Funeral Home*, 264 Mich App 99, 105; 689 NW2d 737 (2004), rev'd on other grounds 472 Mich 929 (2005). The owner is liable for injuries resulting from unsafe conditions caused by his active negligence. If otherwise caused, the landowner is also liable if the unsafe conditions are known to him or existed for a sufficient length of time such that he should have known of them. *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 603-604; 601 NW2d 172 (1999). However, a landowner does not owe a duty to protect invitees from any harm presented by an open and obvious danger unless special aspects of the condition make the risk of harm unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). The open and obvious doctrine does not apply to an ordinary negligence claim, i.e., one predicated on a duty other than that owed by a landowner to his invitee. *Hiner v Mojica*, 271 Mich App 604, 615-616; 722 NW2d 914 (2006).

In this case, the only relationship between plaintiff Michael Koontz and defendant is that of invitor and invitee, and Koontz was allegedly injured due to a condition on the land that defendant failed to discover and remove. Plaintiffs have not identified any separate duty of care that defendant owed to Koontz. Indeed, plaintiffs alleged in their complaint that defendant owed Koontz a duty "to maintain Defendant's premises" and breached this duty by failing to discover and correct, or warn Koontz of, "dangerous and hazardous conditions existing in Defendant's premises." The trial court did not err in concluding that this was a premises liability action to which the open and obvious doctrine applies.

Affirmed.

/s/ Henry William Saad
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello