STATE OF MICHIGAN

COURT OF APPEALS

KEVIN ROMITTI,

Plaintiff-Appellant,

v

PETER W. RYAN, P.C.,

Defendant-Appellee.

UNPUBLISHED
May 21, 2009

No. 284288
Dickinson Circuit Court
LC No. 07-014887-NO

Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

In this premises liability case, plaintiff Kevin Romitti challenges the trial court's order granting summary disposition to defendant Peter W. Ryan, P.C. (Ryan). We affirm.

I. Basic Facts And Procedural History

Romitti was injured on Ryan's premises when he hit the top of his head on the overhang of an entranceway leading to a conference room in Ryan's office. Romitti was entering the conference room for a deposition in a divorce proceeding. The incident took place while Romitti was descending a flight of stairs down to the room. He initially ducked in order to avoid hitting his head, but, mistakenly believing he had cleared the overhang as he walked, he raised his head and struck the overhang. Romitti admitted that he had gone up and down that stairway at least twice before the incident and that he was aware that it was necessary for him to duck in order to avoid hitting his head.

II. Open And Obvious

A. Standard Of Review

Romitti argues that the trial court erred in granting Ryan's motion for summary disposition because genuine issues of material fact exist regarding whether the dangerous condition was open and obvious and, even if the condition were deemed open and obvious, special aspects exist that render the danger unreasonable. We review de novo a trial court's

decision on a motion for summary disposition reviewed.[1] Summary disposition is appropriate when, except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.[2] In determining whether summary disposition is appropriate, the court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in the light most favorable to the party opposing the motion.[3]

B. Elements Of A Prima Facie Case Of Negligence

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.[4]

C. Legal Standards

A premises possessor's duty to an invitee is generally "to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land," unless "'the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them.'"[5] This limitation on the general duty is known as the open and obvious doctrine, and should be viewed as "an integral part of the definition of that duty."[6] However, "circumstances may arise in which an open and obvious condition is nevertheless unreasonably dangerous so as to give rise to a duty upon a premises possessor to in some manner remove or otherwise appropriately protect invitees against the danger."[7] These circumstances, or "special aspects," arise where the invitor "'should anticipate the harm despite knowledge of it on behalf of the invitee.'"[8] But "only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine."[9]

D. Applying The Standards

Romitti argues that genuine issues of material fact exist regarding whether the low overhang was open and obvious. Although he concedes that he knew of the danger posed by the

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[1] *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

[2] MCR 2.116(C)(10); *Latham*, *supra* at 111.

[3] MCR 2.116(G)(5); *Latham*, *supra* at 111.

[4] *Henry v Dow Chemical Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005).

[5] *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001), quoting *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992).

[6] *Id*.

[7] *Id*. at 524.

[8] *Id*. at 516, quoting *Riddle*, *supra* at 96.

[9] *Id*. at 519.

low overhang, he argues that this was only one aspect of the dangerous condition. Romitti contends that the overhang's location in the stairway created a danger that was not open and obvious because he had to choose whether to look up to clear the overhang or down to avoid tripping on the stairs. However, he does not contest testimony that the stairway was lit and that he had avoided hitting his head while descending the stairway twice before the incident. Therefore, we agree with the trial court that the danger posed was open and obvious to an average person upon casual inspection.[10]

Further, the low overhang in Ryan's stairway did not create a uniquely high likelihood of harm. Although it is unclear whether the stairway represented the only entrance to the conference room, Ryan does not contend that Romitti could have entered the room some other way. Therefore, assuming Romitti could attend the deposition only by first descending those particular stairs, the stairway itself was effectively unavoidable. The condition posing the danger, however, was not. Someone who could not avoid entering the conference room through Ryan's stairway could nevertheless avoid the low overhang by ducking down while also looking where he or she stepped. An open and obvious danger does not pose an unreasonable risk of harm if it is the sort of danger that is "common" or "typical," because "an 'ordinarily prudent' person . . . would typically be able to see the [danger] and avoid it."[11] In other words, a reasonably prudent person will watch where he is going and will take appropriate steps for his own safety.[12] Indeed, Romitti acknowledges that he was able to avoid the overhang at least twice using this same strategy. The fact that Romitti misjudged when it was safe to raise his head on this occasion is irrelevant because our focus is "on the objective nature of the condition of the premises at issue, not on the subjective degree of care used by the plaintiff" on this occasion.[13]

In addition, the low overhang did not present a substantial risk of death or severe injury. In *Lugo*, the Michigan Supreme Court stated, "[I]t cannot be expected that a typical person tripping on [an ordinary] pothole and falling to the ground would suffer severe injury."[14] Similarly, it cannot be expected that a typical person hitting his head on a low overhang would suffer severe injury. The risk of severe injury here is not sufficient to constitute a special aspect under the Supreme Court's definition.[15]

Romitti also mentions that the violation of a building code might be evidence of the premises possessor's negligence. However, the mere possibility that a breach of a building code caused a plaintiff to sustain injuries is not sufficient to establish causation.[16] Here, Romitti has

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[10] See *O'Donnell v Garasic*, 259 Mich App 569, 575; 676 NW2d 213 (2003).

[11] *Id*. at 520, quoting *Bertrand v Alan Ford, Inc*, 449 Mich 606, 615; 537 NW2d 185 (1995).

[12] *Bertrand, supra* at 616.

[13] *Lugo, supra* at 523-524.

[14] *Id*. at 520, 522.

[15] See *Corey v Davenport College of Business*, 251 Mich App 1, 6-7; 649 NW2d 392 (2002).

[16] *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

neither shown that there was such a violation nor developed an argument that the violation would prove Ryan's negligence. Because we will not "discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position," the issue is deemed abandoned.[17]

Finally, Romitti appears to argue that the absence of warning signs and hand railings could constitute special aspects. However, while the presence of warning signs might have decreased the risk of injury, their absence was irrelevant when Romitti knew about and had previously avoided the danger of which the signs would have warned. An invitor has no obligation to warn an invitee about a fully obvious condition.[18] Further, while the presence of hand railings might have also decreased the risk of injury, their absence did not give rise to a uniquely high likelihood of injury in this case.[19] In sum, there is nothing so out of the ordinary about the condition on Ryan's premises that would give rise to an exception to the open and obvious doctrine.

Affirmed.

/s/ William C. Whitbeck
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher

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[17] *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

[18] *Bertrand*, *supra* at 610-611.

[19] But cf. *O'Donnell*, *supra* at 576 (holding that the condition of a staircase presented special aspects exempting it from the open and obvious doctrine where, when considered together, the height and steepness of the stairs, the layout of the low-ceilinged loft, the opening between the guardrail and the stair tread, open-sided staircase, the irregularly narrow stair treads, inadequate handrail, and lack of a light switch at the top of the stairs, gave rise to a uniquely high likelihood of harm from falling to the hardwood floor below).