STATE OF MICHIGAN

COURT OF APPEALS

SEBASTIANO GRILLO, Plaintiff-Appellant,	UNPUBLISHED September 30, 2014
v	No. 316380 Macomb Circuit Court
DOMENICO LUCIDO and ENZA LUCIDO, Defendants-Appellees.	LC No. 2012-002003-NO

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals by right the circuit court's order granting summary disposition to defendants. We affirm.

Plaintiff's claim arose when he fell on a garage step while he was a social guest in defendants' home. The circuit court concluded the condition of defendants' garage step was open and obvious. Plaintiff contends that there is a genuine issue of material fact concerning the condition of the step, and that the circuit court erred by concluding otherwise. Specifically, plaintiff argues that defendants' step did not comply with the Michigan Building Code, and that the hazard was not visible to someone using the step. We disagree with plaintiff's arguments.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim) and MCR 2.116(C)(10) (no genuine factual issue). In their motion, however, defendants submitted evidence beyond the pleadings. Plaintiff also relied on evidence beyond the pleadings in his response to defendants' motion. Accordingly, we review the circuit court's decision under MCR 2.116(C)(10).[1]

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court reviews a "motion brought under MCR 2.116(C)(10) by considering the

[1] Defendants attached plaintiff's deposition and photographs of the step to their motion for summary disposition. To the extent plaintiff argues on appeal that defendants failed to support their summary disposition motion, plaintiff is incorrect.

pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition is properly granted "if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* A genuine issue of material fact exists when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party. *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

"In general, a premises possessor owes a duty to an invitee in premises liability cases." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). An invitee is "a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care had been used to prepare the premises." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000). A premises possessor has a duty to his or her invitees to warn of any known dangers on the premises, and also to make the premises safe. *Id.* This duty requires the premises possessor to inspect the premises and make any necessary repairs. *Id.*

In this case, the parties and the circuit court assumed that plaintiff was an invitee. However, there is no evidence on the record to support the assertion that plaintiff was an invitee when he fell. Instead, plaintiff was a licensee. A licensee is "a person who is privileged to enter the land of another by virtue of the possessor's consent." *Stitt*, 462 Mich at 596. Generally, social guests are licensees "who assume the ordinary risks associated with their visit." *Id.* Conversely, "invitee status must be founded on a commercial purpose for visiting the owner's premises." *Id.* at 607. Here, plaintiff was a social guest; he and his wife went to defendants' home for a family gathering. There was no mention in the record of any commercial purpose for plaintiff's visit.

For a licensee, a premises possessor must warn of any hidden dangers the possessor "knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved." *Stitt*, 462 Mich at 596. "A possessor of land has no duty to give warning of dangers that are open and obvious." *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001). Specifically, "no liability arises if the licensee knows or has reason to know of the danger, or if the possessor should expect that the licensee will discover the danger." *Id.* Generally, whether a condition is open and obvious is considered objectively, considering whether an average person with ordinary intelligence would have discovered the condition upon casual inspection. *Price v Kroger Co of Michigan*, 284 Mich App 496, 500-501; 773 NW2d 739 (2009). The danger of tripping and falling on a step is generally open and obvious. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). Accordingly, in the context of a trip and fall on steps, a premises possessor's failure to warn of the dangerous condition of a step generally cannot establish liability unless some "special aspect" of the particular steps makes the risk of harm unreasonable. *Id.*

Only 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. *Lugo*, 464 Mich at 519. This exception to the open and obvious danger doctrine is a narrow one. *Hoffner v Lanctoe*, 492 Mich 450, 462; 821 NW2d 88 (2012). This Court has recognized two circumstances in which special aspects of an open and obvious danger

may give rise to liability: (1) when the danger is unreasonably dangerous or (2) when the danger is effectively unavoidable. *Id.* at 463. However, the "special aspects" doctrine applies only to visitors with invitee status, rather than licensee status, because the duty of a premises possessor to make a condition safe extends only to invitee visitors. See *Pippin*, 245 Mich App at 143. Because plaintiff was a licensee at the time of his fall, the special aspects doctrine does not apply. Even if the special aspects doctrine did apply in this case, the record presents nothing to establish that the alleged danger was unreasonable or was unavoidable.

Plaintiff argues that the allegedly hazardous step was not an open and obvious danger because it was in violation of the Michigan Building Code, and because the excessive overhang of the step was not visible from plaintiff's perspective when he fell. Plaintiff submitted a report from a "consulting engineer" who concluded that the step violated the Michigan Building Code because the overhang was ½ inch too long. This Court has stated that "code violations may provide some evidence of negligence." *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 720; 737 NW2d 179 (2007). However, evidence of a building code violation "is not in itself sufficient to impose a legal duty cognizable in negligence." *Summers v City of Detroit*, 206 Mich App 46, 52; 520 NW2d 356 (1994). Further, Michigan courts generally consider evidence of building code violations to determine whether special aspects were present, not whether a hazard was open and obvious. See *Kennedy*, 274 Mich App at 720. In this case, which involves a licensee rather than an invitee, evidence of a building code violation is unpersuasive for the open and obvious danger inquiry.

Even if the overhang of the step extended ½ inch longer than permissible under the Michigan Building Code, the overhang of the step was visible and apparent to any person who walked up the step under normal conditions; more specifically, an average person of ordinary intelligence would have discovered the overhang upon casual inspection. Plaintiff has not alleged that he tripped because of any problems with the lighting in the garage or any latent structural instability in the step. Even considering the evidence in the light most favorable to plaintiff, there is no genuine issue of material fact that the alleged danger posed by the step was open and obvious.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell