STATE OF MICHIGAN

COURT OF APPEALS

LORRETTA NEEDHAM,

Plaintiff-Appellant,

v

OAKWOOD HEALTHCARE, INC.,

Defendant-Appellee,

and

KASCO CORPORATION and
STUCKY VITALE ARCHITECTS, INC.,

Defendants.

UNPUBLISHED
November 17, 2016

No. 328293
Wayne Circuit Court
LC No. 14-005771-NO

Before: WILDER, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant, Oakwood Healthcare, Inc., in this premises liability action.[1] We affirm.

Plaintiff fell while leaving Oakwood Healthcare, Inc's (hereafter "defendant") facility in October 2013. Plaintiff asserts that she was walking on what appeared to be level concrete when she suddenly stepped into thin air, having encountered steps that were not readily apparent. The trial court granted summary disposition in defendant's favor, opining that there was nothing "unusual" about the character, location and surrounding condition of the steps, or of the steps themselves and that the steps further had a railing going down one side.

We review a trial court's grant or denial of a summary disposition motion de novo. *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 115; 839 NW2d 223 (2013). Defendant brought its motion for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10). In granting defendant's motion, the trial court did not expressly identify the legal

[1] Plaintiff does not appeal the disposition of her claims against the remaining defendants.

grounds on which it found summary disposition appropriate. However, because it is clear that, in reaching its decision, the trial court considered documentation beyond the pleadings, we review the motion under the standard of MCR 2.116(C)(10). See *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19, 23; 800 NW2d 93 (2010).

A motion under MCR 2.116(C)(10) tests the factual support for a claim, *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004), and should be granted as a matter of law when "there is no genuine issue as to any material fact." MCR 2.116(C)(10). A genuine issue of material fact exists when, after viewing the evidence in a light most favorable to the nonmoving party, reasonable minds could differ on the issue. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). This Court reviews the pleadings, affidavits, depositions, admissions, and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Walsh*, 263 Mich App at 621.

Additionally, in a premises liability action, a defendant must owe a duty to conform to a particular standard of conduct. *Morelli v City of Madison Heights*, ___ Mich App ___, ___; ___ NW2d ___ (2016) (Docket No. 326621); slip op at 2 (citation omitted). "Ordinarily, whether a duty exists is a question of law for the court. If there is no duty, summary disposition is proper." *Laier v Kitchen*, 266 Mich App 482, 496; 702 NW2d 199 (2005) (citations omitted).

As an initial matter, plaintiff labels her action against defendant as an ordinary negligence action. "Michigan law distinguishes between claims arising from ordinary negligence and claims premised on a condition of the land." *Buhalis v Trinity Continuing Care Servs*, 296 Mich App 685, 691; 822 NW2d 254 (2012). In an ordinary negligence claim, liability is based on the defendant's duty to conform his conduct to a particular standard of care whereas, in contrast, in a premises liability claim, liability is based on defendant's duty as an owner, possessor, or occupier of land. *Laier*, 266 Mich App at 493. Thus, "[w]hen an injury develops from a condition of the land, rather than emanating from an activity or conduct that created the condition on the property, the action sounds in premises liability." *Woodman v Kera, LLC*, 280 Mich App 125, 153; 760 NW2d 641 (2008).

Although plaintiff labels her claim as a negligence claim, it is clear after reading plaintiff's complaint as a whole that she alleges a premises liability claim. See *Buhalis*, 296 Mich App at 691 (stating that courts are not bound by the labels parties attach to their claims); see also *Adams v Adams*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007) ("It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim."). Plaintiff alleged that a condition on defendant's land, i.e., the steps in question, constituted an unreasonably dangerous condition of the property that gave rise to her injury. Because plaintiff's claim is based on defendant's duty as the owner of the land, we will proceed by applying premises liability law.

"In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of plaintiff's injury, and (4) the plaintiff suffered damages." *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). The duty owed to a plaintiff depends on his or her status on the land. *Id*. It is undisputed that plaintiff was an invitee at the

time of the alleged injury. Generally, a "landowner owes a duty to use reasonable care to protect invitees from unreasonable risks of harm posed by dangerous conditions on the owner's land." *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88 (2012). A landowner may be liable for breaching this duty if he or she is aware of a dangerous condition and "fails to fix the defect, guard against the defect, or warn the invitee of the defect." *Id*.

However, a landowner's liability does not extend to those dangers that are "open and obvious." *Price v Kroger Co of Mich*, 284 Mich App 496, 500-501; 773 NW2d 739 (2009). A condition is "open and obvious" when an average person with ordinary intelligence would have discovered the danger and risk upon casual inspection. *Hoffner*, 492 Mich at 461. The relevant inquiry is an objective one testing whether a reasonable person in plaintiff's position would have foreseen the alleged dangerous condition—not whether this particular plaintiff should have foreseen the danger. *Laier*, 266 Mich App at 498. Generally, if no genuine issue of material fact exists as to whether a condition was "open and obvious," the trial court may decide the issue as a matter of law. See, e.g., *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 484; 760 NW2d 287 (2008).

The danger presented by tripping and falling on a step is considered an open and obvious danger unless there is something unusual about the step that makes the risk of harm unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995); see also *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 521; 629 NW2d 384 (2001). "[O]nly 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." *Lugo*, 464 Mich at 519. "When such special aspects exist, a premises possessor must take reasonable steps to protect an invitee from that *unreasonable* risk of harm." *Hoffner*, 492 Mich at 461.

Plaintiff has failed to establish evidence creating a genuine issue of fact as to whether the steps on defendant's premises contained special aspects making them unreasonably dangerous. At the outset, it is clear that defendant's steps presented an open and obvious danger that a reasonable person would have discovered upon casual inspection. See *Bertrand*, 449 Mich at 616-617. In reviewing the photographs submitted to the trial court, it is apparent that black metal handrails existed on either side of the steps. Moreover, the photographs show the existence of a nearby ramp, which is in close proximity to the steps. The handrails and ramp combined were enough to put a reasonable person on notice of an approaching drop in elevation. Although plaintiff argues that her view of the descending steps was obscured by an optical illusion created by the unmarked steps, the relevant inquiry is objective. Unlike plaintiff's subjective view of the steps, the objective evidence clearly shows a set of ordinary steps with a set of black handrails on either side to indicate an upcoming drop in elevation.

In *Maurer v Oakland Co Parks & Recreation Dep't*, one of the two consolidated cases in *Bertrand*, 449 Mich 606, the plaintiff slipped and fell on an unmarked cement step as she was leaving a rest room area at a park. *Bertrand*, 449 Mich at 618. The plaintiff argued that the defendant was negligent in not marking the step or warning of the existence of the step. *Id*. at 618. Our Supreme Court found summary disposition appropriate on the basis of the open and obvious doctrine because the plaintiff's only asserted basis for finding the step dangerous was that she did not see it. *Id*. at 621. The Court reasoned this was insufficient evidence to show that

the step posed an *unreasonable* risk of harm as required to establish a premises possessor's liability. *Id*.

Similarly, in this case, plaintiff has failed to establish the steps contained special aspects that created a high likelihood of harm or severity of harm. See *id*. Plaintiff admitted that she failed to notice there were steps to descend toward the sidewalk below. Further, at the time of plaintiff's fall, the weather was dry and it was still daylight. Nothing physically obstructed her view of the steps. Moreover, the drop in elevation was approximately 15 inches. This Court has previously recognized in *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 7; 649 NW2d 392 (2002), that "it cannot be expected that a typical person falling a distance of several feet would suffer severe injury or a substantial risk of death." Thus, plaintiff cannot establish that the steps posed an unreasonable risk of harm or severity of harm. See *id*.

To the extent plaintiff contends that the steps presented an unreasonable risk of harm because they were not in compliance with the Life Safety Code and the Standard Practice for Safe Walking Surfaces, we disagree. Although a code violation may be some evidence of negligence, it will not negate the open and obvious doctrine. *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 720; 737 NW2d 179 (2007). Even assuming there was a code violation, the proper inquiry remains whether there were special aspects that gave rise to an unreasonable risk of harm. *Id*. As discussed above, the steps did not contain special aspects making them unreasonably dangerous. Additionally, plaintiff's expert testimony indicating that the steps were in violation of applicable codes and standards for safe walkways does not establish that the steps were a hidden danger, which could not be revealed to an average person upon a casual inspection. Therefore, plaintiff has failed to establish that the steps contained special aspects rendering them unreasonably dangerous. Accordingly, the trial court did not err in granting defendant's motion for summary disposition because no genuine issue of material fact exists as to whether the open and obvious hazard of the steps contained special aspects such that defendant retained a duty to warn or protect plaintiff from the existence of the steps.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto