STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH WILCOX, Plaintiff-Appellant,	UNPUBLISHED January 17, 2017
v	No. 330011 Bay Circuit Court
JOHN A. BERNELIS, Defendant-Appellee.	LC No. 15-003097-NO

Before: O'CONNELL, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's final order granting defendant's motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) because the condition that caused plaintiff's injury was open and obvious. We affirm.

Plaintiff was injured as she attempted to enter defendant's garage. Plaintiff was at defendant's home helping him with a work matter. According to plaintiff, defendant asked her to retrieve his laptop from his car, which was parked in the garage attached to his house. Plaintiff testified that when she got to the door leading from the house to the garage, she "swung the door open." Plaintiff explained that the door quickly swung back on her, which caused her to lose her balance and fall, injuring an ankle. The trial court dismissed plaintiff's cause of action, reasoning that the danger posed was open and obvious.

We review de novo a trial court's decision on a motion for summary disposition. *Fisher v Blankenship*, 286 Mich App 54, 59; 777 NW2d 469 (2009). "This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law." *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005).

Under MCR 2.116(C)(10), summary disposition is proper when "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." A genuine issue of material fact exists when, "viewing the evidence in a light most favorable to the nonmoving party," the record leaves "open an issue upon which reasonable minds might differ." *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013) (internal quotation marks and citation omitted).

"The test for an open and obvious danger focuses on the inquiry: Would an average person of ordinary intelligence discover the danger and the risk it presented on casual inspection?" *Price v Kroger Corp of Mich*, 284 Mich App 496, 501; 773 NW2d 739 (2009). The inquiry is not whether a specific plaintiff should have known of the danger, but "whether a reasonable person in [his or her] position would foresee the danger." *Joyce v Rubin*, 249 Mich App 231, 238-239; 642 NW2d 360 (2002).[1]

Plaintiff argues that the average person would have not been able to determine that the storm door would close at such a fast rate. However, plaintiff admitted in her deposition that there was nothing about the storm door which would have prevented a person of normal intelligence from seeing the pneumatic closer affixed to it. Additionally, it is reasonable to conclude that a person of normal intelligence would have been aware of the resistance in the movement of the door caused by the closer when the person pushed it open. Alerted to the closer and its effect on the movement of the door, an average person could determine that when force is removed (as in a person letting go), the closer would operate to close the door, possibly very quickly. Further, this hypothetical person would be alerted that the closer would bring the open door back toward the person if he or she had not passed through the door.

There is nothing in the record about the characteristics of the pneumatic closer, or its placement on the door, that would mask it from view. Additionally, there is no indication that the absence of a handrail or the presence of the hunting equipment on the steps concealed the danger. In sum, an attentive person of normal intelligence could have appreciated the danger presented by the storm door. The open and obvious doctrine applied, and the grant of summary disposition was appropriate.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Christopher M. Murray

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[1] The parties disagree on whether plaintiff was an invitee or a licensee on defendant's premises. However, consistent with caselaw, the parties agreed at the motion hearing that the open and obvious analysis applies regardless of which status clothed plaintiff. See *Haas v City of Ionia*, 214 Mich App 361, 362; 543 NW2d 21 (1995).