

STATE OF MICHIGAN
COURT OF APPEALS

CARRIE LETOURNEAU,

Plaintiff-Appellant,

v

THE EDISON INSTITUTE,

Defendant-Appellee.

UNPUBLISHED

January 9, 2018

No. 335740

Wayne Circuit Court

LC No. 16-000105-NO

Before: CAMERON, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Holiday Nights at Greenfield Village celebrates the season by offering an old-fashioned Christmas experience complete with horse-drawn carriage rides, chestnuts roasting in barrels, warm beverages, and Santa Claus greeting visitors from the balcony of the historic Robert Frost home. Part of the event's charm is that it occurs at night, with the Village illuminated only by candles and lanterns, just as it would have been on a December evening two centuries ago.

Plaintiff, Carrie Letourneau, and two friends visited the Holiday Nights on a December evening in 2014. As LeTourneau approached the Santa balcony, she tripped and fell on a curb, fracturing her knee. In this premises liability claim, she contends that the darkness and the crowd of people also seeking Santa obscured her ability to see the curb. The circuit court dismissed the case, invoking the open-and-obvious danger doctrine. We affirm, but for a far more basic reason. A central element of every negligence claim is negligence: that a defendant breached a standard of care. LeTourneau has presented no evidence of negligence.

I.

LeTourneau and her friends arrived at the Holiday Nights event between 6:00 and 6:30 p.m., after darkness had descended. The trio saw the attractions, enjoyed a horse and wagon ride, and planned to stay for the fireworks that capped each evening's revelry. At approximately 9:30 p.m., they approached a reindeer pen located in front of a house decked with Christmas lights. Santa sat on the balcony, lit by a spotlight. A crowd had gathered in the area. LeTourneau waded through the people, on her way to ask a Village employee to relay a personalized greeting for Santa to share. She tripped over a curb and sustained injury.

Letourneau's complaint alleges that defendant, The Edison Institute, which owns the premises and operates Holiday Nights, maintained "an unreasonably dangerous condition on the the premises, to wit: a curb or other height discontinuity in the walking surface obscured by darkness and large crowds." The complaint advances several other negligence claims, but they are either boilerplate or irrelevant to this case.¹

Defendant filed a motion for summary disposition after discovery closed, contending that the curb was open and obvious. LeTourneau responded by arguing that she could not see the curb due to darkness and the crowd. The trial court ruled that the curb presented an open and obvious condition, despite the darkness, and that there was no "special aspect" creating an exception to the open-and-obvious danger doctrine. LeTourneau now appeals.

II.

In a premises liability case, the elements of negligence are the same as in any negligence case: duty, breach of duty, proximate cause, and damages. Focusing on the duty and breach components, the common law requires that a business landowner "make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). Alternatively stated, "a premises possessor owes 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." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001).

LeTourneau has failed to identify any negligence committed by defendant in its care or maintenance of the premises. Greenfield Village is, after all, a village, complete with roads, sidewalks and curbs. LeTourneau admitted that she knew that she was on a street and that the street had the usual physical attributes of a street at the time she fell. That defendant permitted a curb to exist is not negligence.

Nor was the darkness a dangerous condition, or evidence of negligence. LeTourneau agreed that the "whole point" of the Holiday Nights celebration "was to take you back centuries." The related point, of course, was to savor the sights under the cover of darkness. The lanterns, candles and twinkling holiday lights set the scene. Failure to illuminate this setting with 21st Century lighting cannot possibly be negligence; turning on the bright lights would entirely destroy its ambience. Just as a movie cannot be enjoyed in a well-lit theater, Holiday Nights was quintessentially a night-time experience.

¹ Representative examples include "choosing not to maintain its premises in a safe and reasonable condition" and "allowing unreasonable defects in the physical structure of its property."

Because Letourneau failed to establish any act of negligence, her claim must fail.

We affirm.

/s/ Thomas C. Cameron
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher