

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE DeGENNARO,

Plaintiff-Appellant,

v

RIVET HOLDINGS INC, WAVELAND
PROPERTY MANAGEMENT LLC, and BIRCH
CREEK CONDOMINIUMS ASSOCIATION INC,

Defendants-Appellees.

UNPUBLISHED

August 26, 2021

No. 354054

Kent Circuit Court

LC No. 2019-005028-NO

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

BOONSTRA, J. (*concurring*).

I concur in the result reached by the majority. I write separately because I cannot ascribe to what in my view is the majority’s overly broad description of this Court’s holding in *Attala v Orcutt*, 306 Mich App 502, 505-506; 857 NW2d 275 (2014), or to the majority’s intimation that an open and obvious hazard might be effectively unavoidable whenever a plaintiff “truly needed to leave his property on foot,” an imprecise and ambiguous standard to say the least.¹ I fully appreciate that our Supreme Court appears to be whittling away at the “special aspects” exception to our “open and obvious” jurisprudence, and specifically to its “effectively unavoidable” prong. See *Est of Livings v Sage’s Investment Group LLC*, ___ Mich ___, ___; ___ NW2d ___ (2021) (Docket No. 159692). And the Supreme Court may be laying the groundwork for upending that jurisprudence entirely. However, unless and until our Supreme Court overrules its prior

¹ Our Supreme Court in *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 518; 629 NW2d 384 (2001), offered, as an illustration of an effectively unavoidable hazard, “a commercial building with only one exit for the general public where the floor is covered with standing water,” forcing a customer who wished to leave to confront the hazard. Nothing in our existing caselaw provides that a hazard may be deemed effectively unavoidable whenever a plaintiff perceives a good reason to navigate it, or simply because some methods of egress may require a plaintiff to confront the hazard.

precedents, see, e.g., *Hoffner v Lanctoe*, 492 Mich 450; 821 NW2d 88 (2012); *Lugo v Ameritech Corp, Inc*, 464 Mich 512; 629 NW2d 384 (2001), I will continue to follow them.

/s/ Mark T. Boonstra