STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH R. CANTRELL,

Plaintiff-Appellant,

v

ASHLEY BROWNSTOWN SOUTH, L.L.C., and FORD MOTOR COMPANY,

Defendants-Appellees.

UNPUBLISHED
October 4, 2011

No. 297604
Wayne Circuit Court
LC No. 09-011573-NO

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendants in this premises liability action arising from plaintiff's trip and fall on a raised steel plate which the trial court held was an open and obvious condition without special aspects. We affirm.

Plaintiff first argues that defendants' summary disposition motion brought under MCR 2.116(C)(10) should have been denied because the raised steel plate was a hidden dangerous condition and it was unreasonably dangerous. After de novo review of the court's decision on this motion testing the factual sufficiency of plaintiff's complaint, we disagree. See *Corley v Detroit Bd of Ed*, 470 Mich 274, 277-278; 681 NW2d 342 (2004).

Plaintiff was an invitee. An invitee is owed a duty by the premises possessor to exercise reasonable care to warn or protect him 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). But a premises owner is not an insurer of safety. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 94; 485 NW2d 676 (1992). Accordingly, where an invitee knows of the danger or where it is so obvious that a reasonable invitee should discover it, a premises owner owes no duty to protect or warn the invitee. *Lugo*, 464 Mich at 516; *Riddle*, 440 Mich at 96. A condition is considered open and obvious if an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). However, if harm should be anticipated despite the invitee's awareness of the obvious condition, i.e., the condition poses an unreasonable risk of severe harm or a uniquely high likelihood of harm, the premises possessor has a duty to undertake reasonable precautions to protect the invitee from that risk. *Lugo*, 464 Mich at 516-519; *Riddle*, 440 Mich at 96.

In this case, plaintiff tripped on a raised steel plate. The steel plate protruded approximately one-half inch from the ground, was of contrasting color to the surrounding asphalt, and was not concealed. Plaintiff admitted that (1) his focus was on closing the door of a trailer that he was picking up from a loading dock, (2) he did not see the steel plate because he was not looking down at the ground, and (3) if he had looked down at the ground, he would have seen the steel plate. It is clear from the evidence presented that plaintiff tripped and fell on the steel plate merely because he did not notice this open and obvious condition. And, contrary to plaintiff's argument, the condition did not contain a special aspect that made it unreasonably dangerous. See *Lugo*, 464 Mich at 519. The steel plate only slightly protruded from the ground and was avoidable. It did not pose an unreasonable risk of severe harm or a uniquely high likelihood of harm. Because there was no genuine issue of material fact on the issues whether the steel plate was open and obvious or contained a special aspect, the trial court properly granted defendants' motion for summary dismissal.

Next, plaintiff argues that *Lugo* was wrongly decided, and he urges this Court to reject *Lugo* and adopt and apply the Restatement (Second) of Torts § 343A. However, we are bound by stare decisis to follow our Supreme Court's decision in *Lugo*. See *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007).

Affirmed.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen