STATE OF MICHIGAN

COURT OF APPEALS

MARY A. WALDER,

Plaintiff-Appellant,

v

ST. JOHN THE EVANGELIST PARISH, a/k/a THE ORDINARY (BISHOP) OF THE ROMAN CATHOLIC DIOCESE OF LANSING IN TRUST FOR ST. JOHN THE EVANGELIST,

Defendant-Appellee.

UNPUBLISHED
September 27, 2011

No. 298178
Genesee Circuit Court
LC No. 09-091572-NO

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff was on her way to help out with a bingo game when she slipped and fell in defendant's parking lot. She broke her ankle and required surgery. On appeal, plaintiff argues that the trial court erred in granting summary disposition to defendant on the basis of the open and obvious doctrine. Plaintiff argues that there were "special aspects" that made the icy condition of the parking lot effectively unavoidable. Plaintiff contends that, in order to reach the alternative rear entrance, she would still have had to cross the icy parking lot from her handicap parking spot; the alternative rear-entrance area and alternative parking lot were also ice-covered; and she was scheduled to work and thus had to cross the ice in order to enter the building. Plaintiff asserts that she raised a genuine issue of material fact regarding whether there was a "special aspect" of the open and obvious danger that precluded summary disposition.

We review de novo the trial court's grant of defendant's motion for summary disposition under MCR 2.116(C)(10). *Oliver v Smith*, 269 Mich App 560, 563; 715 NW2d 314 (2006). In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), the Michigan Supreme Court explained the evidentiary requirements applicable to MCR 2.116(C)(10):

> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at

> trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [Citations omitted.]

"In general, 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). However, a premises possessor is not required to protect an invitee from open and obvious dangers, unless there are special conditions making the danger unreasonable. *Id*. at 517. An open and obvious danger is one that an average user with ordinary intelligence would have been able to discover upon casual inspection. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). This is an objective test, and the court considers whether a reasonable person in the plaintiff's position would have foreseen the danger. *Id*. at 238-239.

In this case, plaintiff does not dispute that the icy condition of defendant's parking lot was an open and obvious danger, but she contends that special aspects of the condition created an unreasonable risk of harm. A premises possessor has a duty to undertake reasonable precautions to protect invitees if special aspects of a condition make even an open and obvious risk unreasonably dangerous. *Lugo*, 464 Mich at 517.

The trial court properly granted defendant's motion for summary disposition after determining that there was no issue of material fact that plaintiff's claims were barred by the open and obvious doctrine. This case merely involved a slippery parking lot in winter. Although plaintiff claims that she had no choice but to cross the slippery parking lot to enter the building, plaintiff presented no evidence that the condition and surrounding circumstances gave rise to a uniquely high likelihood of harm or that it was an unavoidable risk. *Joyce*, 249 Mich App at 242. Plaintiff could have parked in a different spot and used a different entrance. Other bingo helpers and participants parked in the rear parking lot and used the rear entrance. In addition, Charlene Hamper, the bingo chairperson, testified that there were spots of ice in the rear area, not that it was completely ice covered. Also, after plaintiff fell, she got up and walked into the building, evidently avoiding any other slippery spots.

Contrary to plaintiff's assertions, the evidence does not indicate that the parking lot and the sidewalk area were completely covered with ice, as was the situation in *Robertson v Blue Water Oil Co*, 268 Mich App 588, 590; 708 NW2d 749 (2005). In that case, this Court determined that the plaintiff did not have an alternative, ice-free route from the gasoline pumps to the service station. *Id*. at 593-594. Consequently, the ice was effectively unavoidable. *Id*. The evidence presented in this case does not support such a conclusion because all of the parking lots, sidewalks, and entrances were not covered in ice and because, after she fell, plaintiff was able to safely traverse an alternative route to the entrance. The trial court properly concluded that there was no genuine issue of material fact regarding whether there were special aspects of the open and obvious condition that differentiated the risk from a typical open and obvious risk.

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter