

STATE OF MICHIGAN
COURT OF APPEALS

SHERLY EDWARDS,

Plaintiff-Appellant,

v

CAL-AM PROPERTIES, EAST TEN PLAZA,
NORTON S. KARNO,

Defendants/Cross Defendants-
Appellees,

and

THE SALVATION ARMY, and TVI, INC.,

Defendants/Cross-Defendants.

UNPUBLISHED
November 29, 2011

No. 298612
Macomb Circuit Court
LC No. 09-510-NS

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals the trial court's grant of summary disposition to defendants. For the reasons set forth below, we affirm.

Plaintiff argues that the trial court incorrectly ruled that the ramp on which she fell constituted an open and obvious hazard. Plaintiff further contends that, if the hazard was open and obvious, special aspects made the condition unreasonably dangerous.

This Court reviews de novo a trial court's decision to grant summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is proper when, upon examining the pleadings, admissions and other evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Brown v Brown*, 478 Mich 545, 551-52; 739 NW2d 313 (2007).

A premises owner has a duty to use reasonable care to protect invitees from any unreasonably dangerous conditions that the owner knew or should have known existed on the premises. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, a

premises owner has no duty to protect invitees from open and obvious conditions unless special aspects make even open and obvious conditions unreasonably dangerous. *Id.* at 516-17. A condition is open and obvious if an average user with ordinary intelligence would have been able to discover the danger upon casual inspection. *Slaughter v Blarney Castle Oil*, 281 Mich App 474, 478; 760 NW2d 287 (2008) (citing *Novotney v Burger King Corp*, 198 Mich App 470, 475; 499 NW2d 379 (1993)). Special aspects exist where an open and obvious condition creates “an unreasonable risk of harm.” *Lugo*, 464 Mich at 518.

This Court has ruled that handicap ramps generally constitute open and obvious dangers. *See Novotney*, 198 Mich App at 474-75 (a sidewalk with a handicap access ramp is a simple product and its condition, as well as any danger presented, is open and obvious upon casual inspection by an average user of ordinary intelligence). However, plaintiff cites the affidavit of Steven J. Ziemba, to support her position. According to Ziemba, the ramp did not comply with the Michigan Building Code (MBC). Ziemba specifically asserted that the ramp was steeper than specified by the MBC, the sides were not flared to allow proper drainage, and the whole ramp was painted instead of just the edges which would have made the ramp more noticeable and less slippery when wet.

This Court has ruled that a code violation is merely evidence of negligence, and “even when a hazardous condition results from a code violation, ‘[t]he critical inquiry is whether there is something unusual about [the alleged hazard] that gives rise to an unreasonable risk of harm.’” *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 720; 737 NW2d 179 (2007) (citation omitted). Were we to accept that the ramp did not comply with the MBC, on casual inspection, an average user of ordinary intelligence would nonetheless have noticed the alleged danger posed by the handicap ramp. Plaintiff testified that she had already walked up the ramp while on her way into The Salvation Army, so she had already observed the incline. Further, regardless whether water could accumulate on the ramp, plaintiff fell when the weather was clear and she did not testify that there was water on the ground. Thus, an average person, having recently walked on the ramp, would have been aware of the alleged danger it posed. Therefore, the condition was open and obvious.

Plaintiff claims that, even if open and obvious, the ramp was unreasonably dangerous pursuant to *Lugo*, 464 Mich at 518. On the contrary, the alleged danger posed by the ramp was unlikely to cause a substantial risk of death or severe injury. *See Corey v Davenport College*, 251 Mich App 1, 7; 649 NW2d 392 (2002). Further, the ramp was clearly avoidable. Plaintiff admitted that she could have stepped off of the curb instead of walking down the ramp. Therefore, there is also no genuine issue of material fact regarding whether special aspects of the ramp created an unreasonably dangerous condition.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O’Connell