STATE OF MICHIGAN

COURT OF APPEALS

SYLVIA PARKER-DUPREE, Plaintiff-Appellant,	UNPUBLISHED June 18, 2013
v	No. 310013 Oakland Circuit Court
THOMAS RALEIGH, JR., Defendant-Appellee.	LC No. 2011-120556-NO

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, Sylvia Parker-Dupree, appeals as of right the trial court's order granting summary disposition to defendant, Thomas Raleigh, Jr., on the basis of the open and obvious doctrine. We affirm.

I. FACTUAL BACKGROUND

Plaintiff, a mail carrier for the United States Postal Service, was delivering mail to defendant's residence when she slipped and fell. Plaintiff was aware that it had snowed periodically that day and that snow had accumulated. Meteorological data demonstrated that ice developed two days before plaintiff's fall, and it was subsequently covered with snow.

When plaintiff arrived at defendant's residence, she parked her truck, walked up to the house, and delivered the mail. Using the same pathway she used on her way to deliver the mail, plaintiff was leaving when she slipped and fell on the snow covered pathway leading away from the front door. Plaintiff acknowledged that if she had noticed the slippery condition, she could have stepped off of the path, although the snow would have been deep. Plaintiff also acknowledged that she could have taken an alternative route, her usual route up the driveway, which she generally used when there was no snow.

Plaintiff subsequently filed a complaint alleging premises liability. Defendant, however, filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant contended that the condition causing plaintiff's fall was open and obvious and it was not unreasonably dangerous or effectively unavoidable. The trial court granted defendant's motion, finding that the condition of the sidewalk was open and obvious and there were no special aspects creating an unreasonable risk of harm. Plaintiff now appeals.

II. SUMMARY DISPOSITION

A. Standard of Review

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition under MCR 2.116(C)(10) based on the open and obvious doctrine. A grant or denial of a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). The motion for summary disposition "tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). This Court considers only "what was properly presented to the trial court before its decision on the motion." *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003).

B. Analysis

Generally, "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). Yet, a premises possessor is not required to protect an invitee from open and obvious dangers, as an "invitee might reasonably be expected to discover them[.]" *Id.* (quotation marks and citation omitted). "Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection." *Hoffner v Lanctoe*, 492 Mich 450, 461; 821 NW2d 88 (2012). Because this is an objective standard, the relevant inquiry is "whether a reasonable person in the plaintiff's position would have foreseen the danger, not whether the particular plaintiff knew or should have known that the condition was hazardous." *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 479; 760 NW2d 287 (2008). "Generally, the hazard presented by snow and ice is open and obvious, and the landowner has no duty to warn of or remove the hazard." *Buhalis v Trinity Continuing Care Services*, 296 Mich App 685, 694; 822 NW2d 254 (2012) (quotation marks and citation omitted).

However, "special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Lugo*, 464 Mich at 519. Special aspects exist only "when the danger is *unreasonably dangerous* or when the danger is *effectively unavoidable*." *Hoffner*, 492 Mich at 463 (emphasis in original). As the Michigan Supreme Court has recently recognized:

> The touchstone of the "special aspects" analysis is that the condition must be characterized by its *unreasonable risk of harm*. Thus, an "unreasonably dangerous" hazard must be just that—not just a dangerous hazard, but one that is unreasonably so. And it must be more than theoretically or retrospectively dangerous. Similarly, an "effectively unavoidable" condition must be an inherently dangerous hazard that a person is inescapably required to confront under the circumstances. [*Id.* at 455-456 (emphasis in original).]

In the instant case, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because the snow and ice on the sidewalk was effectively unavoidable.[1] The evidence presented in the lower court contradicts such an assertion.

Plaintiff knew that there was snow on the ground and that it could be covering ice. She also navigated the pathway safely when she delivered the mail, avoiding any slippery areas that would cause a person to fall. Moreover, if plaintiff felt that the pathway she used was too dangerous, she could have notified her supervisor or simply stepped off the pathway. Even more significant is that plaintiff admitted that she could have taken an alternate route, using the walkway leading to the driveway. Thus, plaintiff has not established a genuine issue of material fact that the snowy condition on the walkway was effectively unavoidable. Accordingly, the trial court did not err in finding that that there were no special aspects present and in granting summary disposition to defendant.

III. CONCLUSION

Because there is no genuine issue of material fact regarding the open and obvious nature of the complained of condition that was not effectively unavoidable, the trial court properly granted summary disposition to defendant. We affirm.

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

[1] Plaintiff does not challenge that the condition was open and obvious and only contends that it was "effectively unavoidable."