STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1562

Deborah Stock,
Appellant,

vs.

Garrison Y Club, Inc.,
Respondent.

Filed March 17, 2014
Affirmed in part, reversed in part, and remanded
Stoneburner, Judge

Crow Wing County District Court
File No. 18CV123936

Michael A. Bryant, Nicole L. Bettendorf-Hopps, Bradshaw & Bryant, P.L.L.C., Waite Park, Minnesota (for appellant)

Garin L. Strobl, Michael T. Feichtinger, Cally R. Kjellberg-Nelson, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant, who was injured in a fall at respondent's restaurant, challenges the district court's grant of summary judgment to respondent, arguing that the district court erred by concluding that the cause of her fall was an open and obvious hazard for which

respondent had no duty to warn. We affirm the district court's determination that the condition complained of was open and obvious as a matter of law but reverse summary judgment on the issue of whether respondent should have nonetheless anticipated the harm, giving rise to a duty to warn.

FACTS

Appellant Deborah Stock was injured when she fell exiting a restroom on the premises of respondent Garrison Y Club (the restaurant). The restaurant has numerous changes in elevation on its premises, requiring patrons to step up or down, including a step up into the women's restroom. There are several signs in the restaurant warning patrons of the changes in elevation.

Stock, who was at the restaurant to eat dinner and watch a baseball game, negotiated at least three such steps before she went to the women's restroom. She successfully entered the restroom, but on exiting, she fell and was injured. She described the fall in a deposition as follows:

> I just opened the door and just proceeded to walk out like normal. I forgot about the step-up, and I just walked normally out the door, and I was looking to the right because that's the direction I was going to go.
> . . .
> [A]nd I just lost my step because it dropped off.

Stock testified that the floors were not slippery, the restroom lighting was "okay," and the hallway lighting outside of the restroom was "a little darker." She testified that she was not in a hurry to leave the restroom and return to her seat. Stock does not recall seeing any warnings about the step on either side of the restroom door, but she acknowledged

that she must have known that she would have to step down to leave the restroom because she had to step up to enter it. There is evidence in the record that the restaurant had placed a warning sign on the inside of the restroom door, but at some point this sign was missing, and there is no evidence that the sign was in place when Stock fell.

Stock sued the restaurant, alleging that her injuries were caused by negligent maintenance and negligent inspection of the premises. The restaurant denied negligence and asserted that Stock's own negligence caused her injuries. The restaurant moved for summary judgment, arguing that the step is an open and obvious condition observed by Stock as she entered the restroom such that the restaurant had no duty to Stock with regard to the step. Stock opposed the motion, arguing that a reasonable jury could find that the step is not open and obvious because, at the time of fall, she did not know of the step and could not appreciate its danger. Stock also argued that even if the step is an open and obvious condition, the restaurant could have anticipated the harm, giving rise to a duty to warn, and that whether there were distracting circumstances at the time of her fall is a fact issue for the jury.

The district court granted summary judgment to the restaurant based on evidence that Stock was aware of the step and recognized its potential danger; the step is obvious; there were no distracting circumstances; and no material-fact issues exist as to whether the restaurant should have anticipated the harm. This appeal followed.

D E C I S I O N

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). "We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). This court views evidence in a light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002) (citation omitted). But no genuine issue of material fact exists "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

I. The district court did not err by concluding as a matter of law that the step is open and obvious.

"Generally, the existence of a legal duty is an issue for the court to determine as a matter of law." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). And property owners generally owe entrants on their land a duty to use reasonable care for the entrants'

safety. *Olmanson v. LeSueur Cnty.*, 693 N.W.2d 876, 880 (Minn. 2005). "A property owner has a duty to use reasonable care to prevent persons from being injured by conditions on the property that represent foreseeable risk of injury." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 364 (Minn. App. 2000). But a landowner is not liable to an invitee for harm caused by conditions "whose danger is known or obvious" to the invitee unless the landowner "should anticipate the harm despite such knowledge or obviousness." *Louis*, 636 N.W.2d at 319 (quoting *Baber v. Dill*, 531 N.W.2d 493, 495-96 (Minn. 1995)) (quotation marks omitted). This rule has been adopted from Restatement (Second) of Torts § 343A (1965), and the rationale behind it is that "no one needs notice of what he knows or reasonably may be expected to know." *Id.* (quotation omitted).

Stock argues that the district court erred by concluding as a matter of law that she appreciated the danger caused by the step and that, because she did not appreciate the danger, the hazard is not open and obvious. Stock relies on the discussion in *Louis* that requires that there be an appreciation of the danger posed by an open condition in order to conclude that the condition was known. *Id.* at 321. But *Louis* involved a genuine issue of material fact about whether the danger of executing a particular maneuver on a slide into a swimming pool was obvious; such a material-fact issue is not present in this case. *Id.*; *see Dickson v. Emporium Mercantile Co.*, 193 Minn. 629, 630, 259 N.W. 375, 376 (1935) (holding that a customer was not entitled to recover in negligence from a storekeeper for injuries sustained when the customer fell while stepping out of a restroom into a hallway floor at a lower level); *Albachten v. Golden Rule*, 135 Minn. 381, 382, 160

N.W. 1012, 1013 (1917) (stating that the presence of a step at the intersection of hallways in a public building did not, standing alone, create a jury question on the issue of negligent failure to warn). The case law establishes that failure to step up or down a visible step between differing floor levels poses a danger that is obvious as a matter of law. *See Louis*, 636 N.W.2d at 321 (citing other conditions that have been held to involve dangers so obvious that no warning was necessary, including walking into a low hanging branch, walking down a steep hill, walking into a large planter, and walking across a large pool of water).

Stock argues that the fact that she fell is conclusive evidence that she did not know or appreciate the danger of the step down out of the restroom. But when determining whether a condition is obvious, courts use an objective test: "the question is not whether the injured party actually saw the danger, but whether it was in fact visible." *Id.* (quotation omitted). "[A] condition is not 'obvious' unless both the condition and the risk are apparent to and would be recognized by a reasonable [person] 'in the position of the visitor, exercising ordinary perception, intelligence and judgment.'" *Id.* (quoting Restatement (Second) of Torts § 343A cmt. b (1965)). "[T]he key consideration is the nature of the condition, and not the injured party's perception." *Rinn*, 611 N.W.2d at 364. The district court did not err by concluding that as a matter of law, the danger posed by the step in this case is open and obvious to a reasonable person in Stock's position.

II. The district court erred by concluding that Stock did not present evidence sufficient to create a material question of fact about whether the restaurant should have anticipated the harm she suffered despite the open and obvious danger posed by the step.

Stock argues that she presented sufficient evidence to establish a material fact question on the issue of whether the restaurant appreciated that patrons could be injured by the steps on the premises, giving rise to a duty to adequately warn patrons of all steps in the restaurant. Landowners are not liable for harm "caused by known or obvious dangers unless the landowner should anticipate the harm despite its obvious nature." *Sutherland v. Barton*, 570 N.W.2d 1, 7 (Minn. 1997). Stock points to the various warnings posted by the restaurant on both sides of many steps on the premises and asserts that the restaurant could, and did, anticipate that a patron's attention might be distracted from the steps, giving rise to a duty to warn.

The restaurant asserts that *Albachten* and *Dickson* eliminate the need to consider whether a landowner had reason to anticipate the harm by determining that the failure to warn of the step in those cases was not negligent. But *Albachten* and *Dickson* establish only that a step poses an obvious danger, and these cases did not discuss whether the landowners nonetheless had reason to anticipate that harm would arise despite the obvious danger of a step. The issue of whether a harm should have been anticipated, despite the obviousness of the danger posed, is a question for the fact-finder. *Gilmore v. Walgreen Co.*, 759 N.W.2d 433, 436 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009).

A property owner may have reason to anticipate danger, despite the obvious nature of a condition, where he "has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious, or will forget what he has discovered, or fail to protect himself against it." *Id.* (quoting Restatement (Second) of Torts § 343A cmt. f (1965)) (quotation marks omitted). Stock has not presented any evidence of any hallway displays or other distracting circumstances that would lead the restaurant to anticipate that its patrons would ignore the open and obvious step. But she has presented evidence that she forgot about the step and that the restaurant had placed warning signs at other changes of elevation on the premises and intended that there be a warning sign on the inside of the restroom door. This evidence could lead reasonable jurors to conclude that the restaurant appreciated the risk to patrons despite the obviousness of the danger posed by steps. *See id.* at 437 (concluding that testimony of a Walgreens employee that it was common sense that a pallet should not be left in an aisle where customers could trip over it raised a genuine issue of material fact about whether Walgreens employees should have anticipated distractions that would cause a reasonably prudent person to trip on an obvious obstruction in the walkway).

Another "reason to anticipate the harm may arise when the landowner 'has reason to expect that the invitee will proceed to encounter the known or obvious danger because to a reasonable man in his position the advantages of doing so would outweigh the apparent risk.'" *Sutherland*, 570 N.W.2d at 7 (quoting Restatement (Second) of Torts § 343A cmt. f (1965)). The record shows that in order to use the restrooms at the restaurant, patrons must negotiate a step located immediately below the doors to the

restrooms. And a reasonable jury could conclude that the restaurant could anticipate that a reasonable patron would encounter any risk posed by this step rather than forgo use of the restroom. Because the district court erred by concluding as a matter of law that the restaurant did not have reason to appreciate the risk of the open and obvious step, we reverse summary judgment granted to the restaurant on that issue and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.