Court of Appeals, State of Michigan

ORDER

Bonita Bell v Harper-Hutzel Hospital

Docket No. 268422

LC No. 05-504114-NO

Kurtis T. Wilder
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the January 27, 2006, order of the Wayne County Circuit Court is REVERSED, because the trial court erred in ruling that there were special aspects to the open and obvious danger posed by the recently mopped floor of plaintiff's hospital room. In addressing whether the open and obvious risk posed by the wet floor was effectively unavoidable, the trial court erred in considering the particular condition of plaintiff, rather than the condition of the premises, and in failing to utilize an objective standard, i.e., a reasonably prudent person standard. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 328-329; 683 NW2d 573 (2004); *Lugo v Ameritech Corp, Inc,* 464 Mich 512, 517-519; 629 NW2d 384 (2001). A reasonably prudent person who witnessed the nurse mopping the floor in the room would have continued to wait until the floor was dry and/or waited for assistance in reaching the bathroom to shower. Thus, the open and obvious condition was not effectively unavoidable. Because defendant was not under any duty to protect plaintiff from the risk posed by the wet floor, the trial court erred in denying defendant's motion. *Id.*

Accordingly, the matter is REMANDED for entry of an order dismissing plaintiff's premise liability claim. The Court retains no further jurisdiction.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 15 2006
Date

Sandra Schultz Mengel
Chief Clerk