Court of Appeals, State of Michigan

ORDER

Patricia Marie Butt v Detroit Edison Company

Docket No. 287781

LC No. 07-023582-NO

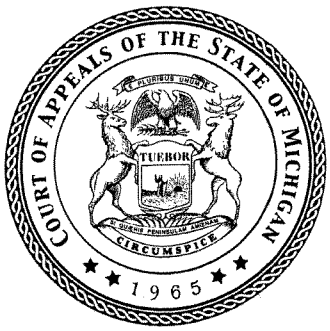
Karen M. Fort Hood
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's August 22, 2008 order denying defendant's motion for summary disposition is REVERSED. Plaintiff's deposition testimony indicates that she was aware of the "bump" that caused her to fall and that she knew the lights were off before she began to walk to her car. Therefore, plaintiff was aware of the conditions and dangers she would encounter. Consequently, defendant owed no duty to protect or warn plaintiff unless defendant should have anticipated the harm despite plaintiff's knowledge of the danger. *Lugo v Ameritech Corp Inc,* 464 Mich 512, 516; 629 NW2d 384 (2001), quoting *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). In the vernacular of *Lugo*, the question is whether the condition presented "special aspects" that should prevail in imposing liability on defendant despite plaintiff's knowledge of the danger. *Lugo, supra* at 516-518. Here, first of all, plaintiff's testimony indicates that the condition was not "effectively unavoidable." Second, the condition in the instant case is insufficient to create the type of substantial risk of death or severe injury contemplated by *Lugo* to remove the condition from the open and obvious danger doctrine. Unlike falling into a thirty foot deep pit, it cannot be expected that that a typical person falling, even a few feet, would suffer severe injury or death. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 6-7; 649 NW2d 392 (2002). Therefore, under *Lugo*, there were no "special aspects" that should prevail in imposing liability on defendant despite plaintiff's knowledge, and defendant owed no duty to plaintiff. Consequently, the trial court erred in denying summary disposition.

This case is REMANDED to the trial court for further proceedings consistent with this order. We do not retain jurisdiction.



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

JAN 16 2009
Date

Sandra Schultz Mengel
Chief Clerk