STATE OF MICHIGAN

COURT OF APPEALS

EDNA ALDRICH,

Plaintiff-Appellant,

v

GRESHAM DRIVING AIDS, INC.,

Defendant-Appellee.

UNPUBLISHED
October 7, 1997

No. 197881
Monroe Circuit Court
LC No. 95-003669-NO

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff filed a complaint alleging injuries arising out of defendant's negligent installation of a wheelchair lift in a van owned by her employer. She claims that while she was standing on the lift, she reached for the control mechanism on the rear door of the van and fell approximately three feet to the ground. Plaintiff argues on appeal that she has asserted defective design and defective manufacture claims. However, after a reading of plaintiff's second amended complaint, plaintiff's allegations are more properly characterized as defendant breaching the duty of reasonable care by negligent installation of the lift.

Plaintiff's first argument on appeal is that the trial court erroneously applied the open and obvious doctrine because plaintiff did not claim a failure to warn, and because the wheelchair lift and controls do not constitute a "simple tool." We disagree. A motion under MCR 2.116(C)(10) tests the factual basis of plaintiff's allegations. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). This Court must view the pleadings, affidavits, depositions, admissions, and any other documentary evidence in the light most favorable to the nonmoving party. *Id*. This Court must then decide "whether a genuine issue regarding any material fact exists to warrant a trial." *Id*. In order to put forth a prima facie case of negligence, plaintiff must establish that defendant owed her a legal duty. *Crews v General Motors Corp*, 400 Mich 208, 224; 253 NW2d 617 (1977). The existence of

a duty is a question of law for the court to decide. *Glittenberg v Doughboy Recreational Industries, Inc*, 436 Mich 673, 682; 462 NW2d 348 (1990).

Plaintiff's argument that the open and obvious doctrine does not apply to her claims must fail. In *Fisher v Johnson Milk Co, Inc*, 383 Mich 158, 160; 174 NW2d 752 (1970), the seminal case regarding the open and obvious doctrine, the Supreme Court stated that "[t]here is no duty to warn *or protect against* dangers obvious to all." (Emphasis supplied.) In *Mallard v Hoffinger (On Rem)*, 222 Mich App 137, 142 n 5; 564 NW2d 74 (1997) this Court stated that manufacturers are relieved of their duty of care if the risk is open and obvious and the product is a simple tool. We see no reason not to apply this rule to defendant, the installer of the lift.

Plaintiff contends that the open and obvious doctrine does not apply because the wheelchair lift and controls are not a simple tool. We disagree. A simple tool is "a product all of whose essential characteristics are fully apparent." *Glittenberg v Doughboy Recreational Industries (On Reh)*, 441 Mich 379, 385; 491 NW2d 208 (1992). The fact that the lift was mechanized is not determinative. In *Viscogliosi v Montgomery Elevator Co*, 208 Mich App 188, 189; 526 NW2d 599 (1994), we held that a moving walkway at an airport was a simple tool even though the plaintiff argued that it was a "mechanically complicated machine." We noted that "case law involving complicated machinery focuses on the way the product is used rather than on its underlying mechanical parts." *Id*. Similarly, in the case at bar, the mechanical parts of the lift are not the essential characteristics that were involved in plaintiff's fall. Plaintiff fell from the platform when she reached for the control box that was located on the rear door of the van. The height of the platform, the presence of the control box on the door, and the door's tendency to swing open were all fully apparent and in fact known by plaintiff. We therefore conclude that the lift was a simple tool.

It is further clear that the alleged dangers associated with the lift were open and obvious. In determining whether a product's danger is open and obvious, we consider the typical user's perception and knowledge and whether the relevant condition or feature that creates the danger associated with use is fully apparent, widely known, commonly recognized, and anticipated by the ordinary user or consumer. *Glittenberg (On Reh), supra*, at 392. A condition is also considered open and obvious if it is discernible by casual inspection. *Id*.

Thus, in *Viscogliosi, supra*, we held that the alleged dangers of a moving walkway were open and obvious because the fact "[t]hat one had to step off at the end of the moving walkway should have been obvious to a reasonable person and was, in fact, known to plaintiff." *Viscogliosi, supra* at 189. In the case at bar, plaintiff was standing on the lift, reached over to push the control button, lost her balance, and fell. Any features of the lift associated with her fall were fully apparent and commonly recognized. Even assuming plaintiff was not familiar with the lift and the door's propensity to sway before this use, the danger would have been discernible after a casual inspection. As soon as the door, upon which the controls are located, is opened, a user would be aware that it does not stop near ninety degrees, but sways all the way open. The ordinary user of the lift would anticipate that if one reached over too far while standing on a raised platform, then one could lose one's balance and fall. The height of the platform, the location of the control box, and the possible movement of the door were all fully

apparent to an ordinary user, and in fact known by plaintiff. The fact that plaintiff could lose her balance and fall if she reached over too far while standing on the platform "should have been obvious to a reasonable person." *Viscogliosi, supra*, p 189. We therefore conclude that plaintiff has failed to establish that she was owed any duty given the open and obvious nature of the alleged danger.

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Robert P. Young, Jr.