

STATE OF MICHIGAN
COURT OF APPEALS

JEAN INGALLS and ROBERT INGALLS,

Plaintiffs-Appellants,

v

MATT KOESTER, d/b/a BLISSFIELD ANTIQUE
MALL, and EDWARD GROHOWSKI,

Defendants-Appellees,

and

SHARON ENGLEHART, d/b/a MEMORIES ON
THE LANE,

Defendant.

UNPUBLISHED

August 2, 2002

No. 231603

Lenawee Circuit Court

LC No. 99-008350-NO

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v*

Sears, Roebuck & Co, 89 Mich App 3, 9; 279 NW2d 318 (1979). A shop owner is liable to invitees for injuries incurred on his premises where the injury results from an unsafe condition caused by the active negligence of the owner or his employees. If the unsafe condition results from other causes, the shop owner is liable if the condition is known to him “or is of such a character or has existed a sufficient length of time that he should have knowledge of it.” *Berryman v Kmart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992), quoting *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968). “Where the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, the plaintiff makes at least a prima facie case.” *Clark v Kmart Corp*, 242 Mich App 137, 140-141; 617 NW2d 729 (2000), rev’d on other grounds 465 Mich 416 (2001). If the plaintiff fails to establish a causal link between the accident and any negligence on the part of the defendant, summary disposition is proper. *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1992).

Plaintiff Jean Ingalls allegedly fell off steps in front of defendants’ store. Steps are such a common occurrence that they do not pose an unreasonable risk of harm and thus a landowner does not owe a duty to protect invitees from any harm they present unless special aspects of the condition, i.e., something unusual about the character, location, or surrounding conditions, make the risk of harm unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). Plaintiff did not show any defect in the steps themselves. While the steps were oddly configured at one end, there was no evidence that plaintiff was at that end of the steps when she fell or that she lost her balance because of the odd configuration. Plaintiff testified that the steps were slippery from the rain, but admitted that she didn’t know if she slipped on the steps or the sidewalk. That aside, defendants obviously did not cause the rain and plaintiff presented no evidence to show that something about the concrete’s surface made it unusually slick when wet or that defendants had reason to know of the condition. Because plaintiff could not connect her fall to any defect, defendants were entitled to judgment as a matter of law. *Stefan v White*, 76 Mich App 654, 658, 661; 257 NW2d 206 (1977).

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra