

STATE OF MICHIGAN
COURT OF APPEALS

ROXANNE JEFFERS,

Plaintiff-Appellant,

v

MELVIN DORIES and RANDALL DORIES,

Defendants-Appellees.

UNPUBLISHED

March 1, 2005

No. 250199

Oakland Circuit Court

LC No. 2002-038424-NO

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right from the trial court's order granting defendants' motion for a directed verdict based on the open and obvious doctrine. We affirm.

Plaintiff commenced this action after she fell while leaving a home that defendant Randall Dories was renting from his father, defendant Melvin Dories. Plaintiff was visiting an acquaintance who was staying with Randall. Plaintiff entered the house while it was still daylight out. After staying for over an hour, as plaintiff was preparing to leave, she asked for a candle or a flashlight because it was now dark outside and the electricity to the house was out that day. She was not provided with a source of light, but proceeded to leave. As she was going out the door, the screen door swung all the way open; it appeared not to have a spring. Plaintiff then caught the tip of her shoe on a small, angled ledge just outside the door, causing her to fall and severely injure her ankle.

Plaintiff argues that the trial court erroneously granted defendants' motion for a directed verdict based on the open and obvious danger doctrine.

A trial court's decision on a motion for a directed verdict is reviewed de novo. *Merkur Steel Supply, Inc v City of Detroit*, 261 Mich App 116, 123; 680 NW2d 485 (2004). "[A]n appellate court is to examine the evidence and all reasonable inferences that may be drawn from it in the light most favorable to the nonmoving party." *Clark v Kmart Corp*, 465 Mich 416, 418; 634 NW2d 347 (2001). "Only if the evidence so viewed fails to establish a claim as a matter of law should the motion be granted." *Id.* at 419.

In the trial court, plaintiff argued that she was a licensee. Social guests are typically licensees who assume the ordinary risks associated with their visits. *James v Alberts*, 464 Mich 12, 19; 626 NW2d 158 (2001).

"A 'licensee' is a person who is privileged to enter the land of another by virtue of the possessor's consent. A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." [*Id.*, quoting *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000).]

The open and obvious doctrine has been applied to licensees, as well as invitees. See *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001); *DeBoard v Fairwood Villas Condominium Ass'n*, 193 Mich App 240, 242-243; 483 NW2d 422 (1992).

A possessor of land has no duty to give warning of dangers that are open and obvious, inasmuch as such dangers come with their own warning. Where there is a duty to a visitor to make a condition safe (i.e., the duty to an invitee), potential liability will remain for harm from conditions that are still unreasonably dangerous despite their open and obvious nature. . . . However, with regard to licensees, no liability arises if the licensee knows or has reason to know of the danger, or if the possessor should expect that the licensee will discover the danger. . . . Hence, a possessor of land has no obligation to take any steps to safeguard licensees from conditions that are open and obvious. . . . [*Pippin, supra* (citations omitted).]

The test for an open and obvious danger is an objective one. "A condition is open and obvious if it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection." *O'Donnell v Garasic*, 259 Mich App 569, 575; 676 NW2d 213 (2003). The standard is that of a reasonably prudent person and only the condition of the premises may be considered, not the condition of the plaintiff. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329; 683 NW2d 573 (2004).

Plaintiff argues that the trial court failed to consider the specific risk posed by the ledge when granting a directed verdict for defendants. We disagree. Viewing the evidence in the light most favorable to plaintiff, it was apparent that she entered and exited the same door. Plaintiff was able to observe the doorway ledge when she first entered the house, while it was still daylight. The risk posed by the ledge was objectively apparent to a reasonable person viewing it, even only one time. Plaintiff does not otherwise explain how the risk posed by the ledge would not be apparent to a reasonably prudent person. The facts of this case are similar to those in *O'Donnell, supra* at 575, wherein this Court rejected the plaintiff's claim that darkness precluded application of the open and obvious doctrine where the plaintiff was aware of the allegedly dangerous condition, stairs, when she viewed the stairs earlier when illuminated by light. In this case, plaintiff similarly viewed the doorway earlier in the evening, while it was still daylight.

Because the trial court correctly concluded that the condition in this case was open and obvious, there is no merit to plaintiff's claim that defendants owed her a duty to warn of an

unknown danger. A possessor of land owes no duty to warn of dangers that are open and obvious. *Pippin, supra*.

We disagree with plaintiff's claim that this case involves special aspects that preclude defendants from relying on the open and obvious doctrine.

In *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517-519; 629 NW2d 384 (2001), the Supreme Court held that, in certain cases, "special aspects" of open and obvious conditions may create an unreasonable risk of harm sufficient to impose liability against the possessor of land despite the openness and obviousness of the condition. "[O]nly those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Id.* at 519.

Some the examples of unreasonable risks of harm given in *Lugo* include a commercial building open to the public where the floor is covered with water and only one exit is available. *Id.* at 518. An example of an unreasonably high risk of severe harm is an unguarded thirty-foot deep pit in the middle of a parking lot. *Id.* Such a condition presents such a substantial risk of death or severe injury to one who might fall into the pit that it would be unreasonably dangerous to maintain that condition without taking some precautions. *Id.* In contrast, ordinary potholes in a parking lot do not possess such special aspects. *Id.* at 520.

The facts of this case do not demonstrate that the risk posed involves special aspects that bar defendants from relying on the open and obvious doctrine. The trial court found that plaintiff failed to present any evidence that this case fell within the "special aspects" category. We agree. The risk here was a ledge only a few inches high that protruded from the doorway and sloped away from the house. This was not a condition that was unavoidable. Plaintiff could have easily stepped over the ledge or used the front door. Any hidden risk also did not involve an unreasonably high risk of severe injury or death. Plaintiff has not shown that the open and obvious doctrine should not apply in this case based on special aspects of the risk posed. See, e.g., *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 7; 649 NW2d 392 (2002) (the plaintiff's fall on a stairway consisting of three steps, which were elevated only a few feet, was not the type of special aspect contemplated by the Court in *Lugo*).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski