STATE OF MICHIGAN

COURT OF APPEALS

LISA MCCRAW,

Plaintiff-Appellant,

v

BLUE GOOSE INN,

Defendant-Appellee.

UNPUBLISHED
June 21, 2005

No. 261145
Macomb Circuit Court
LC No. 2004-002206-NO

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff slipped and fell on snow or ice as she walked to her car in an alley next to defendant's building that employees used for parking. Plaintiff acknowledges that the condition was open and obvious, but claims that the condition was effectively unavoidable, a special aspect that made it unreasonably dangerous. The trial court granted defendant summary disposition pursuant to MCR 2.116(C)(10.) Plaintiff appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."

Invitors are not absolute insurers of the safety of their invitees. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995) (citation omitted). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001) (citation omitted). The duty generally does not encompass warning about or removing open and obvious dangers unless the premises owner should anticipate that special aspects of the condition make even an open and obvious risk unreasonably dangerous. *Id*. at 517. Pursuant to *Lugo*, *supra* at 517, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the landowner has a duty to undertake reasonable precautions to protect his invitees. But "only 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. In *Lugo*, the Court provided two examples to illustrate when a condition could be considered unavoidable or unreasonably dangerous: (1) when the floor of a commercial building with a single exit is covered with water, the open and obvious doctrine would not apply because the

condition would be essentially unavoidable; (2) when an unguarded thirty-foot hole exists in the middle of a parking lot, the open and obvious doctrine would not bar liability because the situation "would present such a substantial risk of death or severe injury to one who fell in the pit that it would be unreasonably dangerous to maintain the condition, at least absent reasonable warnings or other remedial measures being taken." *Id*. at 518-519.

Plaintiff acknowledges that the ice and snow in this case were obvious, but contends that the hazard was essentially unavoidable and, therefore, analogous to the first of the "special aspects" examples in *Lugo*, *supra* at 518-519. Plaintiff cites a particular page in her deposition as factual support for her contention that a snow mound blocked access to her automobile and forced her onto the only path available. But the cited deposition page was not presented to the trial court and is not part of the record on appeal. MCR 7.210(A). Plaintiff's deposition testimony and the other evidence presented do not indicate that there was only one way for plaintiff to access her car. In fact, her claim that the snow mound blocked her path conflicts with her testimony that when she left her car, she was able to avoid the mound by walking on the pavement between the mound and her car. Moreover, the mound was only on the driver's side. Plaintiff did not testify regarding her ability to access the car from the passenger side. The trial court properly granted summary disposition to defendant because plaintiff failed to present evidence creating a genuine issue of material fact that the hazard was effectively unavoidable and therefore unreasonably dangerous.

In light of our resolution of this issue, we need not address the other issues raised by the parties to this action.

Affirmed.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello