

STATE OF MICHIGAN
COURT OF APPEALS

FATEN YOUSIF,

Plaintiff-Appellant,

V

WALLED MONA,

Defendant-Appellee.

UNPUBLISHED

August 16, 2005

No. 246680

Macomb Circuit Court

LC No. 02-001903-NO

ON REMAND

Before: Markey, P.J., and Wilder and Meter, JJ.

WILDER, J, *dissenting*.

I respectfully dissent. As noted by the Supreme Court on remand to this Court, plaintiff is a social guest and therefore “assumes the ordinary risks that come with the premises.” *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2001). The evidence was that the carpeting in defendant’s home was subject to snag as a result of the weekly in-home steam cleaning. As a social guest, plaintiff assumed the ordinary risks that are presented by carpet snags occasioned by steam cleaning.

The majority concludes, however, that the loose carpet thread was a hidden danger and posed an unreasonable risk because of its placement at the top of the stairs. I disagree. In *Komalski v St. Johns Lutheran Church*, 261 Mich App 56, 64-65; 680 NW2d 50 (2004), this Court, citing to the Restatement of Torts (2d), Section 342, p. 210, noted in part that “[a] possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, . . . the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger.” The evidence here fails to establish that defendant should have realized that the particular carpet loop presented an unreasonable risk of danger, or that any existing danger would not be discovered or realized by the plaintiff.

As noted *supra*, the evidence was that there were carpet loops throughout the house. Although plaintiff may not have seen the carpet loop at the top of the stairs, it was there to be seen on careful inspection had plaintiff performed such an inspection. The evidence does not show that the location of the carpet loop was such that defendant should have expected that the carpet loop could not be discovered by his social guests. In addition, according to defendant, 15 - 20 people visited his home on most days, there were a number of people at the wedding gathering on the date of the accident involved in this case, and numerous people had gone up and down the stairs before plaintiff fell. Plaintiff herself had been up and down those same stairs in

the past, and the evidence was that neither plaintiff nor anyone else had fallen on the stairs. Thus, while defendant was aware of the carpet loop, he testified that he did not believe that the carpet loop posed a danger.

On this record, I would conclude on remand that plaintiff has failed to show that defendant should have realized that the carpet pull in question presented an unreasonable risk of harm requiring a warning by defendant to his guests. In the absence of any prior tripping incidents, defendant's belief that the carpet loop did not pose a danger was objectively well-reasoned.

I would affirm.

/s/ Kurtis T. Wilder