

STATE OF MICHIGAN
COURT OF APPEALS

WANDA MUSCAT,

Plaintiff-Appellant,

v

CINTAS CORPORATION,

Defendant-Appellee,

and

ST. JOHN HEALTH SYSTEM-DETROIT-
MACOMB CAMPUS, d/b/a ST. JOHN MACOMB
HOSPITAL,

Defendant.

UNPUBLISHED

January 12, 2006

No. 263898

Macomb Circuit Court

LC No. 03-004835-NO

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting summary disposition in favor of defendant Cintas Corporation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In January of 2003, plaintiff, an employee of defendant St. John Macomb Hospital, entered the hospital building through the front entrance. She was walking across a floor mat when she tripped and fell to the floor, sustaining a serious injury to her left shoulder and other injuries. Pursuant to an agreement with the hospital, Cintas supplied rubber-backed floor mats for placement throughout the building. Plaintiff filed suit alleging, that both Cintas and the hospital breached their duty to select an appropriate mat for placement at the entrance and to maintain the mat in a reasonably safe condition.¹

¹ Because plaintiff’s claim against her employer was dismissed prior to this appeal, we shall use defendant to refer solely to defendant Cintas.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it owed no duty to plaintiff because it merely delivered mats to the hospital pursuant to the agreement; the hospital determined where mats would be placed within its building. Moreover, defendant asserted that no evidence showed that the mat on which plaintiff fell was defective.

The trial court noted that there was some confusion concerning whether plaintiff's claim was one for products liability or brought under some other theory. However, the trial court noted that there was no evidence that the mat was defectively designed or manufactured and plaintiff's complaint appeared only to contend that the mat was defective given its placement. Next, the trial court rejected plaintiff's contention that defendant had assumed a duty to make safety recommendations concerning the use and placement of its product or that it actually placed the mat in question. The trial court then concluded that plaintiff's claim was essentially one for premises liability, and that because defendant did not have control over the premises, it could not be liable under that theory. For these reasons, the trial court determined that defendant owed no duty to plaintiff and, therefore, granted defendant's motion for summary disposition.

Because we agree that plaintiff failed to establish that defendant owed her a duty, we affirm. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Williams v Medukas*, 266 Mich App 505, 507; 702 NW2d 667 (2005). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*, quoting *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). The issue of duty is a question of law for the court. *Moning v Alfonso*, 400 Mich 425, 436-437; 254 NW2d 759 (1977). The concept of duty encompasses whether the defendant owes the plaintiff an obligation to avoid negligent conduct. If no duty exists, there can be no actionable negligence. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 359; 584 NW2d 345 (1998).

Plaintiff failed to present any evidence that the mat in question was defective for purposes of product liability. See MCL 600.2945(h) & (i). Instead, plaintiff argued and continues to argue that the type of mat supplied was inappropriately placed at the location in question. Hence, plaintiff's claim was not one for products liability.

Further, a tort action premised on the negligent performance of a contractual obligation must be based on the existence of a duty separate and distinct from the contractual obligation itself. *Fultz v Union-Commerce Assocs*, 470 Mich 460, 467; 683 NW2d 587 (2004). Contrary to plaintiff's assertion, no evidence showed that defendant made or participated in the decision regarding what type of mat to place at the entrance to the hospital. At the time plaintiff's accident occurred, defendant offered only one type of mat and no evidence showed that it represented that that particular type of mat was appropriate for the location in question. Hence, no evidence showed that defendant assumed a duty separate and distinct from its contractual obligation to deliver mats to the hospital. In the absence of such a duty, defendant cannot be held liable in tort for plaintiff's injuries. *Id.*

Finally, the trial court correctly concluded that, if plaintiff's claim were based on premises liability, defendant would still not be liable. Premises liability is conditioned upon the presence of both possession of and control over the premises. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660-662; 575 NW2d 745 (1998). No evidence established that defendant had actual possession and control over the hospital premises. The agreement between the hospital and defendant required defendant to deliver mats to the hospital, but the hospital controlled its premises. Hence, defendant was not a premises possessor for purposes of premises liability. *Id.* at 664.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot