

STATE OF MICHIGAN
COURT OF APPEALS

BERYL RHODES,

Plaintiff-Appellee,

v

DETROIT MEDICAL CENTER,

Defendant-Appellant.

UNPUBLISHED
February 16, 2006

No. 262787
Wayne Circuit Court
LC No. 04-400879-NO

Before: Donofrio, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

In this case arising from a slip and fall on hospital premises, defendant appeals by leave granted the trial court's order denying defendant's motion for summary disposition. We reverse.

We review de novo the trial court's decision on defendant's motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Because the trial court relied on matters outside of the pleadings, we construe the motion as having been brought pursuant to MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

Defendant first contends that the trial court erred in denying its motion for summary disposition of plaintiff's premises liability claim. We agree.

"To establish a prima facie case of negligence, a plaintiff must prove: (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach caused the plaintiff's injuries, and (4) the plaintiff suffered damages." *Kosmalski ex rel Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 60; 680 NW2d 50 (2004). "Generally, a premises possessor owes a duty of care to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 328; 683 NW2d 573 (2004). This duty does not encompass a duty to protect an invitee from known or "open and obvious" dangers unless the premises possessor should anticipate the harm despite the invitee's knowledge of the condition. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). The invitor

has a duty to take reasonable precautions to protect invitees from an open and obvious danger only "if special aspects of a condition make even an open and obvious risk unreasonably dangerous" *Id.* at 517.

In this case, the evidence demonstrates that the cord was black and the tile floor was gray creating a contrast between the cord and the floor. Overhead lights adequately illuminated the room including the floor. Nothing obstructed a view of the cord, which ran from the foot of the bed, onto the floor along the side of the bed, and up to the head of the bed. Plaintiff testified that she did not see the cord immediately before her fall, but she was able to identify the cord after her fall. However, it is not relevant whether plaintiff saw the cord before her fall. The relevant question is whether a reasonable person, upon casual inspection, would have seen the cord. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). There is no genuine issue of material fact that a reasonable person, upon casual inspection, would have been able to see the cord and avoid it. Accordingly, we conclude that the cord presented an open and obvious condition. Further, there is no genuine issue of material fact as to whether a special aspect made the condition unreasonably dangerous. The cord was not unavoidable; the evidence shows there was ample room to avoid the cord. Also, objectively viewed, the existence of a cord next to a hospital bed does not pose a uniquely high likelihood of harm or severity of harm. Therefore, the trial court erred in denying defendant's motion for summary disposition of plaintiff's negligence claim.

We also agree with defendant that the trial court erred in denying defendant's motion for summary disposition of plaintiff's claims of breach of statutory duty and breach of contract. It is well established that the gravamen of an action is determined by reading the claim as a whole. *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 253; 506 NW2d 562 (1993). Plaintiff did not allege any specific statute giving rise to a duty distinct from that of an ordinary premises owner. On appeal, plaintiff asserts for the first time that the statutory duty arises from the Joint Hospital Authority Act, MCL 331.1, 331.5, 331.6, and 331.9. Those statutes, however, provide generally for the formation, organization, and management of local hospital authorities and hospital boards. Nothing in those statutes sets forth a duty to protect hospital invitees from the alleged harm. Plaintiff's claim for breach of contract also does not allege any duty arising from a specific contract. Rather, this claim simply restates plaintiff's negligence claim couched in terms of breach of contract. Moreover, plaintiff has produced no evidence of a written or verbal contract. Therefore, we conclude that the trial court erred in denying defendant's motion for summary disposition of these claims.

We reverse the order of the trial court and remand for entry of an order granting summary disposition in defendant's favor. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Kirsten Frank Kelly