

STATE OF MICHIGAN
COURT OF APPEALS

SHARON LACROSS,

Plaintiff-Appellant,

v

RANKIN INDUSTRIAL PARK and RANKIN
PARK, L.L.C.,

Defendants-Appellees.

UNPUBLISHED

May 23, 2006

No. 258953

Oakland Circuit Court

LC No. 03-054126-NO

Before: Fort Hood, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff concedes that the icy sidewalk upon which she fell was open and obvious but argues that special aspects existed to remove it from the open and obvious doctrine. We disagree. We review de novo a trial court's grant of a motion for summary disposition. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West, supra* at 183.

A prima facie case of negligence requires a party to establish: (1) a duty; (2) breach of that duty; (3) proximate cause; and (4) damages. *Jones v Enertel, Inc*, 254 Mich App 432, 436-437; 656 NW2d 870 (2002). A landowner has a duty to exercise reasonable care to protect invitees from unreasonable risks of harm caused by a dangerous condition of the land that the owner knows or should know the invitees will not discover, realize or protect themselves against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). The duty does not include open and obvious dangers unless "special aspects" of the condition make the risk "unreasonably dangerous." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517; 629 NW2d 384 (2001). A "special aspect" exists when evidence is submitted to show that the condition is "effectively unavoidable," creating a "uniquely high likelihood of harm," or when the condition

creates “an unreasonably high risk of severe harm.” *Id.* at 518-519. Both the special aspects and open and obvious analysis are objective, “i.e., the fact finder should utilize a reasonably prudent person standard.” *Mann v Shusteric Enterprises, Inc.*, 470 Mich 320, 328-329; 683 NW2d 573 (2004).

Plaintiff argues that because she suffered from “osteoarthritis and degenerative joint disease,” and because she was only able to use the front entrance to defendants’ building, she was effectively forced to traverse the icy sidewalk. However, in a premises liability action, the fact-finder must consider the condition of the premises, not the condition of the plaintiff, when determining if a special aspect exists. *Mann, supra* at 328-329. For example, the Supreme Court has held that a visibly intoxicated person should be held to the same standard of conduct as a sober person. *Id.* at 329. Therefore, the proper inquiry is to determine whether, viewed objectively, the icy sidewalk was “effectively unavoidable,” creating a “uniquely high likelihood of harm,” or whether the icy sidewalk created “an unreasonably high risk of severe harm.” *Lugo, supra* at 518-519.

In the present case, the evidence presented regarding the ice on the sidewalk in front of defendants’ building indicates a reasonably prudent person in plaintiff’s position would have been able to recognize the ice on the sidewalk and avoid it. Plaintiff testified that there was a rear entrance, with six to seven indoor steps leading to the interior of defendants’ building. The majority of VPSI employees parked in the rear parking lot and utilized the rear entrance. On February 24, 2003, VPSI employees parked in the rear lot and utilized the rear entrance to enter defendants’ building. Plaintiff testified she was the only person in the front lot at the time of her fall and that the only reason she did not use the rear parking lot was because she did not want to walk up the steps on the inside of the rear entrance. However, in a premises liability action, the fact-finder must consider the condition of the premises, not the condition of the plaintiff, when determining if a special aspect exists. *Mann, supra* at 329. Here, the evidence shows that plaintiff had access to the rear parking lot and the rear entrance and that plaintiff appreciated that there was ice on the front parking lot and on the sidewalk near the front entrance when plaintiff exited her car. A reasonably prudent person in plaintiff’s position could have completely avoided the icy sidewalk in front of defendants’ building by parking in the rear parking lot and using the rear entrance.

Alternatively, plaintiff could have waited in her car for another employee to come and assist her in walking to the front entrance or to put down salt on the front sidewalk, or plaintiff could have chosen not to encounter the icy sidewalk at all and could have returned home without ever exiting her car. Finally, although plaintiff fell while walking across the sidewalk, the evidence shows that other employees at VPSI, the two unidentified persons who discovered plaintiff and both paramedics attending to plaintiff traversed the same sidewalk shortly after plaintiff fell without slipping and falling on the ice. Thus, the ice on the sidewalk was not so “effectively unavoidable” that it created a “uniquely high likelihood of harm,” and a reasonably prudent person in plaintiff’s position would have been able to avoid the icy sidewalk. *Mann, supra* at 328-329; *Lugo, supra* at 518-519.

Additionally, the ice on the sidewalk did not create an “unreasonably high risk of severe harm.” *Lugo, supra* at 518. Icy and snowy conditions in a parking lot have generally been held to be “both common and avoidable.” *Kenny v Katz*, 264 Mich App 99, 117-118; 689 NW2d 737 (2004) (Griffin, J., dissenting), rev’d 472 Mich 929; 697 NW2d 526 (2005) (reversing in lieu of

granting leave to appeal for the reasons stated in the dissenting opinion). This Court has held that a layer of ice and snow on a sidewalk is not so “unreasonably dangerous that it would create a risk of death or severe injury.” *Joyce v Rubin*, 249 Mich App 231, 243; 642 NW2d 360 (2002). Further, this Court has found that no special aspect of snowy, icy steps satisfied the type of harm *Lugo* contemplated. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 7; 649 NW2d 392 (2002). In the present case, plaintiff testified that there was no snow on the sidewalk but that there was ice “all over the sidewalk.” Viewed objectively, we conclude that this condition did not pose an unreasonably high risk of severe harm that would satisfy the special aspect criteria set forth in *Lugo, supra* at 518.

Plaintiff contends that she suffers from osteoarthritis and degenerative joint disease and that she could only park in the front parking lot and use the front entrance. Plaintiff argues that, because of her condition and because the rear entrance did not comply with the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, she was forced to use the front entrance. However, when considering whether a special aspect of a condition removed the danger from the open and obvious doctrine, the proper analysis is to focus on the objective nature of the premises and not the condition of the plaintiff. *Mann, supra* at 328-329. Furthermore, we note that plaintiff has failed to submit evidence showing how defendants’ building violated the PWDCRA. Thus, we conclude the trial court properly granted defendants’ motion for summary disposition because plaintiff failed to create a genuine issue of material fact regarding whether special aspects existed to remove the icy sidewalk from the open and obvious doctrine.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter

I concur in result only.

/s/ Karen M. Fort Hood