

STATE OF MICHIGAN
COURT OF APPEALS

DESHEAN WILLIAMS,

Plaintiff-Appellant,

v

HOLIDAY VENTURES APARTMENTS, INC.,

Defendant-Appellee.

UNPUBLISHED

March 1, 2011

No. 296051

Monroe Circuit Court

LC No. 08-026289-NO

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Deshean Williams challenges the grant of summary disposition in favor of Holiday Ventures Apartments, Inc. (hereinafter “Holiday”) in this premises liability action. We affirm.

On the evening of November 10, 2005, Williams and Rod Alford went to the Holiday apartment complex to assist another friend in moving. Williams and Alford entered the friend’s apartment building using the front entrance. Approximately 30 minutes after arriving, Williams and Alford left their friend’s apartment and exited the building using the rear entrance. The lighting at the rear entry was reported to be dim. The rear entrance was covered by an awning and contained a porch that was situated approximately one foot higher than the sidewalk that led up to the building. The sidewalk did not extend the entire width of the porch and was raised approximately three inches above the ground abutting the sidewalk. At the time of Williams’ fall, he contends that the area below the porch was covered in leaves, concealing the edge of the sidewalk and the lower ground level. Alford experienced no difficulty after stepping off the back porch. Williams contends that he fell into a hole or a depression in the ground concealed by the leaves when he stepped off the back porch causing him to twist his ankle and incur an injury. The trial court granted summary disposition in favor of Holiday finding that the leaf covered walkway constituted an open and obvious danger, which contained no special aspects. We review the trial court’s grant of summary disposition de novo.¹

¹ *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Because Williams' legal status was that of an invitee, as the premises owner Holiday had "a duty . . . to exercise reasonable care to protect [Williams] from an unreasonable risk of harm caused by a dangerous condition on the land."² Holiday's duty, however, "does not extend to open and obvious dangers . . . unless a special aspect of the condition makes even an open and obvious risk unreasonably dangerous."³ "Whether a danger is open and obvious depends on whether it is reasonable to expect an average user of ordinary intelligence to discover the danger upon casual inspection."⁴ "[D]iffering floor levels, such as . . . uneven pavement . . . are 'not ordinarily actionable unless unique circumstances surrounding the area in issue made the situation unreasonably dangerous.'"⁵

The leaf covered sidewalk in this circumstance is analogous to those cases involving snow covered walkways. This Court has repeatedly determined that, "by its very nature, a snow-covered surface presents an open and obvious danger because of the high probability that it may be slippery."⁶ Consequently, the risk of a slip and fall due to ice concealed by a covering of snow fails to present sufficient special aspects to remove it from the open and obvious doctrine.⁷ Following the reasoning of these cases, encountering a leaf covered walkway in the autumn in Michigan is not an unusual or unexpected circumstance or condition. Such a situation would alert the average individual to the potential danger for either a slippery condition due to the presence of the leaves or the possibility of the existence of a hidden condition underneath the leaves. Williams acknowledged that he saw the leaf-covered sidewalk before stepping off the porch, thereby rendering the condition open and obvious to his casual observation. As a reasonable person would have foreseen the potential danger, the grant of summary disposition was proper.⁸

We similarly reject Williams' contention that a special aspect existed that would preclude the grant of summary disposition. Our Supreme Court has stated:

[W]ith regard to open and obvious dangers, the critical question is whether there is evidence that creates a genuine issue of material fact regarding whether there are truly "special aspects" of the open and obvious condition that differentiate the risk from typical open and obvious risks so as to create an unreasonable risk of harm, i.e., whether the "special aspect" of the condition should prevail in

² *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001).

³ *Royce v Chatwell Club Apartments*, 276 Mich App 389, 392; 740 NW2d 547 (2007) (citation omitted).

⁴ *Weakley v Dearborn Hts*, 240 Mich App 382, 385; 612 NW2d 428 (2000).

⁵ *Id.* at 386, quoting *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995).

⁶ *Royce*, 276 Mich App 393-394 (citation omitted).

⁷ *Id.* at 395-396.

⁸ *Royce*, 276 Mich App at 392.

imposing liability upon the defendant or the openness and obviousness of the condition should prevail in barring liability.⁹

Examples of a “special aspect creating an unreasonable risk of harm may exist where . . . the floor of the sole exit of a commercial building is covered with standing water, requiring persons to enter and exit through the water and creating an unavoidable risk” or the presence of “an unguarded 30-foot-deep pit in the middle of a parking lot.”¹⁰ As these examples illustrate, “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.”¹¹

Williams’ contention regarding the existence of a special aspect must fail for two reasons. First, the risk of injury presented by the height discrepancy between the ground level and the abutting sidewalk is not “sufficiently similar to those special aspects discussed [by our Supreme Court] to constitute a *uniquely high* likelihood or severity of harm and remove the condition from the open and obvious danger doctrine.”¹² Second, the risk was not unavoidable. Williams acknowledged accessing the building from an alternative entrance. Because Williams had a viable and convenient alternative for egress from the building, the condition of the back entry sidewalk did not present a special aspect for the imposition of liability.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer

⁹ *Lugo*, 464 Mich at 517-518.

¹⁰ *Royce*, 276 Mich App at 395, citing *Lugo*, 464 Mich at 518.

¹¹ *Id.*, citing *Lugo*, 464 Mich at 519.

¹² *Id.* at 395-396.