

STATE OF MICHIGAN
COURT OF APPEALS

PRISCILLA ARNOLD,

Plaintiff-Appellant,

v

COUNTRY BROTHERS, INC.,

Defendant-Appellee.

UNPUBLISHED

June 29, 2004

No. 245474

Genesee Circuit Court

LC No. 01-072093-NO

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition and dismissing this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an invitee on defendant's premises, sustained injuries when the door of the stall in the women's restroom was pushed open and struck her in the face. The door was not equipped with a lock, and opened inward toward the stall's occupant. Plaintiff filed suit alleging that defendant negligently failed to maintain the premises in a safe condition and to warn of the unsafe condition. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that no issue of fact existed regarding whether the condition was open and obvious, and that no special aspects of the condition made it unreasonably dangerous.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 609; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id.* at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If special aspects of a condition

make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Assuming arguendo that the door on the stall constituted a dangerous condition because it had no locking device and opened inward toward the occupant, no issue of fact existed regarding whether the condition was open and obvious because plaintiff was aware of the condition and had been using that stall for over thirty years. Furthermore, no evidence established that the condition remained unreasonably dangerous in spite of its open and obvious nature. *Id.*

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

I concur in the result only.

/s/ Donald S. Owens