

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA EDWARDS,

Plaintiff-Appellee,

v

DANNY JOHNSON,

Defendant-Appellant.

UNPUBLISHED

March 15, 2005

No. 251158

Wayne Circuit Court

LC No. 02-224995-NO

Before: Zahra, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order denying his motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

On October 18, 2001, plaintiff, a licensee, tripped and fell at the bottom of defendant's basement stairway, fracturing her leg. Plaintiff filed a negligence suit to recover for her personal injuries. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10), which the trial court denied on the ground that the extra step at the bottom of the stairs extended beyond the end of the handrail, creating a genuine issue of material fact as to whether the danger was hidden.

On appeal, defendant argues that the trial court erred because the short handrail, and step on which plaintiff fell, were open and obvious as a matter of law. After de novo review to determine whether there is a genuine issue of material fact, we agree. See MCR 2.116(C)(10); *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

To succeed on a negligence claim, a plaintiff must prove that the defendant breached a duty owed to the plaintiff, causing her to sustain injuries and suffer damages. See *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Here, it is undisputed that plaintiff was a licensee at the time of her injury; thus, defendant only owed plaintiff a duty to warn of any hidden dangers defendant knew or had reason to know of, if plaintiff did not know or have reason to know of the dangers involved. See *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 60, 64; 680 NW2d 50 (2004). The claimed "hidden danger" at issue here is the handrail stopping short of the bottom step. But, if this condition was open and obvious, defendant had no duty to warn plaintiff of it because "[a] landowner has no duty to safeguard a licensee from an open and obvious danger." *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001). A danger is open and obvious if an average user with ordinary intelligence would have been able to

discover the danger and the risk presented upon casual inspection, i.e., whether a reasonable person in plaintiff's position would foresee the danger. *Joyce v Rubin*, 249 Mich App 231, 238-239; 642 NW2d 360 (2002); *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 11; 574 NW2d 691 (1997).

Defendant argues that if plaintiff had turned on the light before she attempted to walk down the basement stairs, she would have seen the short handrail and extra step because it was not hidden. But for her failure to flip the light switch on that was within her reach at the top of the stairs before she attempted their descent, plaintiff would not have fallen. We agree. The danger of the short handrail and extra step was plainly visible, thus, an average user with ordinary intelligence would have been able to discover the danger by flipping the light switch on and the risk presented would have been obvious. A reasonable person in plaintiff's position would have foreseen the danger of a misstep from traversing down an unfamiliar basement stairway in the dark. Nothing prevented plaintiff from (1) turning on the light before beginning the descent, (2) turning around and going back up the stairway if it became too dark to see the stairs after she began her descent, or (3) not descending down the dark stairway if she felt uncomfortable turning on the light without defendant's permission as she claimed in her deposition. Further, the short handrail and extra step are not "special aspects" within the contemplation of *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517-518; 629 NW2d 384 (2001) and, thus, the open and obvious condition was not unreasonably dangerous. Accordingly, viewed in a light most favorable to plaintiff, she failed to establish that defendant breached a duty owed to her and his motion for summary disposition should have been granted.

Reversed and remanded for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh