

STATE OF MICHIGAN
COURT OF APPEALS

MARY HOLLENBECK,

Plaintiff-Appellant,

V

GOLDEN GREEK LOUNGE, INC.,

Defendant-Appellee.

UNPUBLISHED

March 15, 2005

No. 251548

Wayne Circuit Court

LC No. 02-219653-NO

Before: Wilder, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

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

Plaintiff's first asserts that genuine issues of material fact existed regarding whether the condition was open and obvious, and that the trial court erred in granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We disagree.

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating a motion under MCR 2.116(C)(10), the trial court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Corley v Detroit Board of Education*, 470 Mich 274, 278; 681 NW2d 342 (2004). All reasonable inferences must be resolved in favor of the nonmoving party. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 618; 537 NW2d 185 (1995). This Court reviews a trial court's decision on a motion for summary disposition de novo, and also considers the facts in the light most favorable to the nonmoving party, in this case, the plaintiffs. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

In general, a premises possessor owes a duty to an invitee to exercise reasonable care to warn or protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp.*, 464 Mich 512, 516; 629 NW2d 384 (2001). The open and obvious doctrine, however, circumscribes this general duty. *Id.* Under most circumstances, a possessor of land is not required to warn or protect an invitee from an open and obvious danger. *Id.* at 517. A condition is open and obvious if it is reasonable to expect that an average person of

ordinary intelligence will discover the danger upon casual inspection. *O'Donnell v Garasic*, 259 Mich App 569, 574; 676 NW2d 213 (2003). However, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk. *Lugo, supra* at 517. The *Lugo* Court referred to an unguarded thirty foot deep pit in the middle of a parking lot as an example of an unreasonably dangerous, open and obvious condition. *Id.* at 518. Special aspects of a condition exist when the open and obvious condition, if not ameliorated or avoided, would create a uniquely high likelihood of harm or severity of harm. *Id.* at 519. A uniquely high likelihood of harm emerges when a person cannot effectively avoid the dangerous condition, such as when a customer must exit a commercial building by way of a floor covered with standing water because this is the only means of exit for the general public. *Id.* The open and obvious doctrine should not be viewed as some type of exception to the duty generally owed invitees, but rather, as an integral part of the definition of that duty. *Id.* at 516.

The trial court correctly found there was no genuine issue of material fact that the condition of the area outside of the door and the danger it presented was open and obvious. Plaintiff was aware of the snowy and icy conditions outside of the side door of the lounge, having acknowledged that there was a heavy snowfall the day before the incident and described the snowfall as “ice snow.” Plaintiff noticed the snow on the ground as she left the building, and also noticed the mound of snow between the pylons before she traversed the area. Therefore, the condition outside of the side door of the lounge was open and obvious.

There also were no special aspects of the condition that created a unreasonable risk of harm. In *Joyce v Rubin*, 249 Mich App 231; 642 NW 2d 360 (2002), the plaintiff was removing her personal belongings from the defendant’s home when she slipped and fell on the sidewalk leading to the defendant’s front door. A panel of this Court held that the snowfall in that case was a common condition that did not represent the kind of uniquely dangerous condition that would remove the cause from the open and obvious danger doctrine, particularly because the plaintiff clearly appreciated the risk of harm and nevertheless, chose to encounter the condition. *Id.* at 243. The Court also held that there was no evidence that suggested that the condition was so unreasonably dangerous that it would create a risk of death or severe injury. *Id.*

In the instant case, plaintiff appreciated the risk and chose to encounter the mound of snow. In addition, the mound of snow between the pylons was a common condition that was not uniquely dangerous. Plaintiff knew four or five inches of “ice snow” fell the previous day. She saw the snow on the ground as she exited the building and was looking down as she traversed the mound of snow. Unlike the thirty foot pit in *Lugo*, a small mound of snow is not an unreasonably dangerous condition and does not present an unreasonable risk of harm.

We reject plaintiff’s contention that the open and obvious doctrine is not applicable in the instant case because there were no alternative means of egress from the building, making the condition effectively unavoidable. Plaintiff acknowledged that she could have traveled between the pylons perpendicular to the door, but chose to take a more direct route to the vehicle and cut through the pylons at a forty-five degree angle. There was also testimony that the front door was available as a means to exit the building. Since alternatives were readily available, plaintiff’s contention is without merit.

Plaintiff's second issue on appeal is that the trial court erred in denying her motion for reconsideration. We disagree.

This Court reviews a trial court's decision denying a motion for reconsideration for an abuse of discretion. An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion. *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1998). Generally, and without restricting the discretion of the court, a motion for reconsideration that merely presents the same issues ruled on by the trial court, either expressly or by reasonable implication, will not be granted. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. *Id.*

In support of her motion for reconsideration, plaintiff presented the same issues previously ruled on by the trial court. Therefore, the trial court did not err in denying plaintiff's motion for reconsideration.

Affirmed.

/s/ Kurtis T. Wilder
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly