

STATE OF MICHIGAN
COURT OF APPEALS

LESLIE G. DYER, M.D. and ANTOINETTE M.
DYER,

UNPUBLISHED
May 24, 2005

Plaintiffs-Appellees,

v

MARQUETTE GENERAL HOSPITAL, INC.,

No. 252413
Marquette Circuit Court
LC No. 03-040407-NO

Defendant-Appellant.

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

In this premises liability action, defendant hospital appeals by leave granted from the circuit court's order denying its motion for summary disposition. We affirm and remand for further proceedings. This case is being decided without oral argument under MCR 7.214(E).

Plaintiffs' claim is based on Leslie Dyer's slip and fall on a hallway floor in defendant hospital. At the time, Leslie Dyer (plaintiff) was an independent physician working at defendant hospital. Antoinette Dyer's derivative claim is for loss of consortium. On appeal, defendant hospital claims the circuit court erred in denying its motion for summary disposition because there is no genuine issue of material fact as to whether the wet floor was an open and obvious condition. We disagree.

A circuit court's ruling on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003), and the court views the evidence in the light most favorable to the party opposing the motion. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Summary disposition is appropriate under MCR 2.116(C)(10) when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue on which reasonable minds could differ. *West, supra* at 183.

The parties agree that plaintiff was a business invitee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000). Defendant thus had a duty to protect him from unreasonable risks of harm caused by dangerous conditions on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). "The landowner has a duty of

care, not only to warn . . . of any known dangers, but the additional obligation to also make the premises safe” *Stitt, supra* at 597. However, defendant’s duty did not extend to dangerous conditions that were open and obvious, unless special aspects of the condition gave “rise to a uniquely high likelihood of harm . . . if the risk [was] not avoided.” *Lugo, supra* at 518-519. 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.” *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

Viewing the evidence in the light most favorable to plaintiff, we conclude that the record in this case leaves open an issue on which reasonable minds could differ. *West, supra* at 183. The hallway where plaintiff fell was being mopped by two employees of defendant hospital. There were “hazard” cones in the hallway; however, the placement of these cones was such that they were not visible to plaintiff as he walked down the hallway that was perpendicular to the hallway being mopped. Plaintiff turned the corner, took a step or two, and slipped on the wet floor. Reasonable minds could differ on the question whether the cones gave plaintiff any notice of the wet floor.

Reasonable minds could also differ on the question whether the wet floor was itself open and obvious. Photographs support plaintiff’s testimony that the floor is extremely shiny and reflective, and that water such as that left by mopping was not visible upon casual inspection. We conclude that the circuit court did not err in concluding that there was a genuine issue of material fact regarding whether the dangerous condition was open and obvious, i.e., whether the average person of ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection of the hallway when approaching from the perpendicular hallway. *Novotney, supra* at 475.

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski