

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PAMALA BROWNLEE and PAUL  
BROWNLEE,

Plaintiffs-Appellants,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

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UNPUBLISHED  
August 30, 2005

No. 252867  
Oakland Circuit Court  
LC No. 03-047476-NO

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs commenced this action after plaintiff Pamela Brownlee slipped on a puddle of water while clearing dishes in a kitchen at a General Motors Proving Grounds facility in Milford, Michigan.<sup>1</sup> The trial court granted summary disposition in favor of defendant, concluding that the puddle did not create an unreasonable risk of harm because it was open and obvious, and that there were no special aspects to the condition because plaintiff could have avoided it.

A trial court's decision granting summary disposition is reviewed de novo to determine whether the prevailing party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). A question of fact exists when reasonable minds could differ on the conclusions to be drawn from the evidence. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 398-399; 491 NW2d 208 (1992).

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<sup>1</sup> Plaintiff Paul Brownlee brought a claim for loss of consortium. As used in this opinion, the term "plaintiff" refers only to Pamela Brownlee.

Plaintiff, an employee of Aramark Food Services, was on defendant's premises for business purposes that benefited defendant. Therefore, plaintiff was defendant's invitee. See *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993). Plaintiff's responsibilities included serving food, bussing tables, mopping floors and general cleaning. On the date of the incident, plaintiff was assigned to clean the food service line. A co-worker was assigned to the dishwasher. Plaintiff was injured when she slipped on the water while taking a dirty cup and dish to the dishwasher.

A "landowner has a duty of care, not only to warn [an] invitee of any known dangers, but also to make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). A premises possessor is not required to protect an invitee from open and obvious dangers, but "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 v Ameritech Corp, Inc*, 464 Mich 512, 517; 629 NW2d 384 (2001).

In this case, plaintiff admits that she was aware of the large puddle of water in front of and around the dishwasher, because the pipes under the dishwasher had been leaking for months. Thus, the only question is whether there were "special aspects" to the puddle that made it unreasonably dangerous, notwithstanding that it was open and obvious. In *Lugo, supra* at 518-519, our Supreme Court cautioned that in considering whether special aspects exist, the risks posed by the condition ought not be considered after the fact. A risk ought not be deemed to have special aspects because, in hindsight, the risk of serious injury is apparent. Rather, special aspects exist only where the open and obvious condition is effectively unavoidable or where the conditions "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided . . . ." *Id.*

In this case, the trial court determined that the risk of harm was avoidable, observing that plaintiff could have set the dishes in another area without adverse employment repercussions. Plaintiff admitted she would not have suffered any adverse employment action had she simply set the plates in another area of the kitchen. Thus, plaintiff was not required to traverse the wet floor in order to comply with the demands of her employment. Because the condition was avoidable, we agree with the trial court that the hazardous condition in the kitchen did not have any special aspects that precluded application of the open and obvious danger defense to plaintiff's premises liability claim.

Affirmed.

/s/ Brian K. Zahra  
/s/ Hilda R. Gage  
/s/ Christopher M. Murray