

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID MEAD and MELISSA MEAD,

Plaintiffs-Appellants,

v

BARRETT PAVING MATERIALS, INC.,

Defendant-Appellee.

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UNPUBLISHED

August 30, 2005

No. 261197

Washtenaw Circuit Court

LC No. 04-000247-NO

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

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff David Mead delivered fuel to defendant's premises. He slipped and fell on a dilapidated ladder used to access defendant's fuel storage tank, which was situated on a flatbed trailer. The trial court ruled that the defective ladder was open and obvious and lacked any special aspects that would render it unreasonably dangerous.

We review the trial court's ruling on a motion for summary disposition de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

The parties do not dispute that plaintiff was an invitee on defendant's premises. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2000). "A premises owner owes, in general, a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Kenny v Kaatz Funeral Home*, 264 Mich App 99, 105; 689 NW2d 737 (2004), rev'd on other grounds \_\_ Mich \_\_; 697 NW2d 526 (2005). "The care required extends to instrumentalities on the premises that the invitee uses at the invitation of the premises owner." *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995).

An open and obvious danger is one that is known to the invitee or is so obvious that the invitee might reasonably be expected to discover it, i.e., it is something that an average user with ordinary intelligence would be able to discover upon casual inspection. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992); *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). A landowner does not owe a duty to

protect invitees from any harm presented by an open and obvious danger unless special aspects of the condition, i.e., something unusual about the character, location, or surrounding conditions, make the risk of harm unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). However, “only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine.” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 519; 629 NW2d 384 (2001). A special aspect is one, for example, which the invitee could not avoid regardless of the care taken for his or her own safety. *Id.* at 518. “Though the condition is open and obvious, the ‘special aspects’ of the condition would render the condition ‘effectively unavoidable’ and therefore could constitute an unreasonably dangerous risk.” *Joyce v Rubin*, 249 Mich App 231, 242; 642 NW2d 360 (2002), quoting *Lugo, supra* at 517-518.

We reverse. The trial court did not err in finding that the defective condition of the ladder was open and obvious. Plaintiff acknowledged that the ladder was missing one or two rungs, and that the lower rails were broken or bent. Although plaintiff did not necessarily have to climb the ladder by utilizing the bent rail as a step, he had no choice but to use the ladder in order to make his fuel delivery. The defective ladder provided the only means of access to the trailer on which the storage tank was situated, and there was no evidence that plaintiff could have elected to refuse to make the delivery until a safe ladder was provided. Therefore, the trial court erred in finding that no issue of fact existed with respect to whether any special aspects of the condition made it unreasonably dangerous. *Lugo, supra* at 518.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Donald S. Owens