

STATE OF MICHIGAN  
COURT OF APPEALS

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NICHOLE BUDNICK and THOMAS BUDNICK,

Plaintiffs-Appellants,

v

WENDY FLANAGAN,

Defendant-Appellee.

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UNPUBLISHED

March 28, 2006

No. 257642

Macomb Circuit Court

LC No. 03-003964-NO

Before: Owens, PJ, and Kelly and Fort Hood, JJ

PER CURIAM.

Plaintiffs<sup>1</sup> appeal as of right an order granting summary disposition to defendant. We affirm.

This case arose when plaintiff, a home care nurse, allegedly slipped on snow and ice and fell when leaving defendant's house after treating defendant's daughter. Plaintiffs argue that special aspects made the condition of snow and ice on defendant's premises unreasonably dangerous, and because plaintiff's contact with the snow and ice was "effectively unavoidable," summary disposition in favor of defendant was improper. We disagree.

We review de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). The record is considered in a light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists that precludes granting judgment as a matter of law to the moving party. *Laier v Kitchen*, 266 Mich App 482, 486-487; 702 NW2d 199 (2005). Once the moving party has met the initial burden by supporting its position with documentary evidence, the burden shifts to the nonmoving party to establish the existence of a genuine issue of fact. *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). A genuine issue of fact exists when the record leaves open an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

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<sup>1</sup> Thomas Budnick's loss of consortium claim was derivative in nature. Therefore, our use of plaintiff in the singular refers to Nichole Budnick.

A landowner owes an invitee a duty to exercise reasonable care to protect the invitee from unreasonable risks of harm caused by dangerous conditions on the land. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, this duty generally does not include removing open and obvious dangers. *Id.*, p 516. In *Lugo*, the Supreme Court found that, as a general rule, “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, supra*, p 517. Special aspects exist when an open and obvious danger is unavoidable or results in a uniquely high likelihood of harm or severity of harm. *Bragan v Symanzik*, 263 Mich App 324, 331-332; 687 NW2d 881 (2004).

The open and obvious doctrine applies to cases involving the accumulation of ice and snow. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 332; 683 NW2d 573 (2004). Therefore, when the accumulation is open and obvious, a premises possessor must take reasonable steps within a reasonable time after the accumulation to reduce the plaintiff’s risk of injury only if some special aspect makes the accumulation unreasonably dangerous. *Id.* The mere presence of ice, snow or frost generally does not create an unreasonably dangerous condition; rather, a plaintiff must present evidence of special aspects to differentiate it from the usual situation involving ice, snow or frost. *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11, 19-20; 643 NW2d 212 (2002).

Both parties agree that the condition of the snow and ice was open and obvious. However, plaintiffs argue that special aspects made the condition of snow and ice unreasonably dangerous and unavoidable. They claim plaintiff’s contact with the snow and ice was “effectively unavoidable” because she would have encountered snow and ice at every exit from defendant’s home. They maintain that, because plaintiff was carrying two bags of medical supplies and equipment, the unavoidable contact with the snow and ice was much more hazardous. To support this argument, they rely on the illustration used by the *Lugo* Court in which the Court noted that a special aspect would include a situation in which the only public exit from a commercial building was covered with standing water and, even though open and obvious, would require a customer to leave the store through the water. *Lugo, supra*, p 518. The Court noted that a special aspect would exist because the open and obvious condition could not be avoided. *Id.*, p 518.

Although plaintiffs argue the conditions of snow and ice were effectively unavoidable, the evidence does not support this claim. When plaintiff entered defendant’s home, she followed in the footsteps of defendant and her two daughters as they walked from the driveway across the snow-covered grass to the front porch, and did so without incident. When she left the home, she chose a different path to her car. When asked if she could have taken the same path that she had when she arrived, she responded, “I could have, but it didn’t make much sense to.” The present case is distinguishable from the illustration used in *Lugo*. The commercial building in *Lugo* only had one means of exiting, which was over the water-covered ground. In the present case, plaintiff had at least two means of reaching her car.

A reasonable person, able to discover and assess the danger and risk presented by the snow and ice, would have left the premises in the same manner in which four people had entered without incident. There is no indication in the record that there was a change in the weather conditions within the 30 to 45 minutes that plaintiff was in defendant’s home, so it was possible

for her to leave in the same manner, and under the same weather conditions, in which she arrived. Thus, the risk was avoidable, and plaintiffs' argument is without merit. *Corey v Davenport College of Business*, 251 Mich App 1, 6-7; 649 NW2d 392 (2002).

Plaintiffs further argue that, despite the open and obvious conditions, defendant was not relieved of her duty to remedy the hazardous condition of snow and ice because when defendant told plaintiff to be careful, defendant recognized that the conditions on her property were hazardous. Although special aspects may make even an open and obvious risk unreasonably dangerous, *Lugo, supra*, p 517, a common and avoidable condition is not uniquely dangerous, *Corey, supra*, p 8-9. Because snow-covered ground is a common condition in December in Michigan, and plaintiffs have failed to point to any other aspect that made the snow and ice unreasonably dangerous, we conclude that the court properly granted defendant summary disposition.<sup>2</sup>

Affirmed.

/s/ Donald S. Owens  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood

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<sup>2</sup> We note that the conflicts in evidence were not material to whether plaintiffs' claims were barred by the open and obvious doctrine or whether special aspects existed and, thus, were not material to a determination of this case.