

STATE OF MICHIGAN
COURT OF APPEALS

RUBY K. CRAWFORD,

Plaintiff-Appellant,

v

DETROIT ENTERTAINMENT, L.L.C., d/b/a
MOTOR CITY CASINO,

Defendant-Appellee.

UNPUBLISHED

August 22, 2006

No. 266289

Wayne Circuit Court

LC No. 04-430753-NO

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability case involving plaintiff's slip and fall on ice near the covered valet parking entrance to defendant's casino. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts

On the afternoon of March 6, 2003, plaintiff and her sister-in-law, Modean Crawford, arrived in a vehicle driven by Crawford at the covered valet parking area of defendant's casino. According to plaintiff, the valet attendant waved for Crawford to park in a particular area. Crawford stopped the vehicle, and plaintiff exited from the passenger side. Crawford testified that she noticed that on the driver's side there was ice and snow. She testified that "it was real bad that day" and she told plaintiff to be careful because there was ice and snow along the curb. An attendant directed plaintiff where to walk. Following his direction, plaintiff walked around the front of the car and stepped on the sidewalk, whereupon she slipped on a patch of ice and fell. Plaintiff stated that she could not see the ice before she fell, but afterward she saw "crushed up little chunks of crushed ice." Plaintiff described the ice as "very thin" and transparent, and claimed that it covered the width of a square of the sidewalk and about half of the length, about 18 inches long but wider. Plaintiff also saw a small amount of blue or green crystals that she believed to be salt.

The trial court granted defendant's motion for summary disposition for the reason that the condition was open and obvious and there were no special aspects making it unreasonably dangerous.

II. Analysis

Plaintiff contends that the trial court erred in granting defendant motion. We disagree.

A. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

B. Open and Obvious

Invitors are not absolute insurers of the safety of their invitees. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). The duty generally does not encompass warning about or removing open and obvious dangers unless the premises owner should anticipate that special aspects of the condition make even an open and obvious risk unreasonably dangerous. *Id.* at 517. Whether a hazardous condition is open and obvious is determined by asking the question: "Would an average user with ordinary intelligence 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). The determination depends on the characteristics of a reasonably prudent person, not on the characteristics of a particular plaintiff. See *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329 n 10; 683 NW2d 573 (2004). The open and obvious danger doctrine applies to the accumulation of snow and ice. *Id.* at 332.

The trial court compared this case to *Kenny v Kaatz Funeral Home*, 264 Mich App 99; 689 NW2d 737 (2004), rev'd for the reasons stated in the dissenting opinion 472 Mich 929 (2005). There, the plaintiff fell on snow-covered "black ice." Before she fell, she saw her three companions holding on to the hood of the car for support. 264 Mich App 115 (Griffin, J., dissenting). Judge Griffin opined, and the Supreme Court agreed, that "after witnessing three companions exit a vehicle into the snow-covered parking lot on December 27 and seeing them holding on to the hood of the car to keep their balance, all reasonable Michigan winter residents would conclude that the snow-covered parking lot was slippery." *Id.* at 120.

This case is slightly different than *Kenny* in that the ice was not covered by snow. Nonetheless, the test for whether an icy hazardous condition is open and obvious is the same as other hazards, i.e., whether an average user of ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Novotney, supra* at 475. According to the evidence presented, the high temperature for the day was 27 degrees and the low temperature was 14 degrees Fahrenheit. Precipitation measured one inch and occurred between 7:00 a.m. and 12:00 p.m. When plaintiff approached the casino, it was approximately 2:47 p.m. Plaintiff noticed that there were salt crystals on the area where she slipped. Furthermore, Crawford testified:

[I]t was real bad that day, and I was telling [plaintiff] to be careful, because my side was just ice and snow. I couldn't see in front of the van. So when she came across the front of the van to step up on the curb, it was a little salt down there, you know, but we couldn't tell – I couldn't tell if it was a glaze or if it was an ice or if it was just dry pavement because of the salt melting it. I couldn't tell. As I was telling her to be careful, she fell.

Crawford also testified, “On the curb side they had a lot of ice and snow there. You know, you have to watch your step, and they had some salt down.” Plaintiff argues that the condition was not open and obvious because the valet attendant directed her to walk where she fell. Specifically, plaintiff asserts, “Plaintiff, by virtue of having valet parked, expected that the area would be free of hazards and that she could easily walk to the front door.” We disagree. Plaintiff’s subjective *expectation* of safety does not come to bear in this analysis. Rather, as stated above, the relevant question is, “Would an average user with ordinary intelligence have been able to discover the danger and the risk presented upon casual inspection?” *Novotney, supra* at 475. Under the circumstances, an ordinarily prudent person would have concluded that the weather conditions and the presence of salt crystals indicated the possibility of slippery pavement and appreciated the risk involved in walking there. Viewing the evidence in the light most favorable to plaintiff, we conclude that there was no genuine issue of fact as to whether the condition was open and obvious.

C. Special Aspects

Plaintiff also contends that the fact that the attendant directed her to walk where the ice was present removes the danger from the open and obvious doctrine by presenting a special aspect that made the open and obvious condition unreasonably dangerous.

In *Bertrand, supra* at 611, our Supreme Court held that, “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.” The Court defined a special aspect as “something unusual about the character, location, or surrounding conditions” that makes the risk of harm unreasonable. *Id.* at 614. In *Lugo*, the Court further specified that, “In sum, 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, supra* at 518. As an example, the Court noted that a special aspect might be present if the open and obvious condition is “effectively unavoidable.” *Id.* at 518.

In this case, the valet attendant’s poor direction was not a special aspect that rendered the open and obvious icy condition unreasonably dangerous. The condition was not effectively unavoidable simply because plaintiff was directed to walk over an icy patch strewn with undisputedly visible salt crystals. Moreover, the risk presented was clear even to Crawford who viewed the area from inside the vehicle. Under those circumstances, an ordinarily prudent person would have questioned the attendant’s direction and remained, as plaintiff was, free to choose not to enter the casino, not to traverse that area, or to choose another entryway.

The trial court did not err in granting summary disposition on the basis that the condition was open and obvious as a matter of law.

We affirm.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter