

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY SHINE,

Plaintiff-Appellant,

v

MGM GRAND DETROIT, L.L.C.,

Defendant-Appellee.

UNPUBLISHED

November 14, 2006

No. 269381

Wayne Circuit Court

LC No. 04-433970-NO

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) in this premises liability case involving a trip on a rug. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff testified that he tripped on a “throw rug” in the hallway near a Football Frenzy promotions booth. Plaintiff was walking with a cane because his left knee was recovering from knee replacement surgery. He was not aware that he had approached the rug. The rug “entangled” his right leg. He did not know if the rug was loose or “bunched up.” Plaintiff also stated that the rug was placed in the only entry to the Football Frenzy area and that the advertising for the event was a distraction.

II. STANDARD OF REVIEW

This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.”

III. ANALYSIS

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) (citation omitted). 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 depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 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 hazard and risk posed by a rug is apparent on casual inspection. Plaintiff’s testimony that his foot became “entangled” in it does not show that there was a hazard about that particular rug that was unusual and not apparent to an average person on casual inspection.

Plaintiff argues that there were unique circumstances that made the hazard unreasonably dangerous because defendant created the dangerous condition by placing the rug and because the hazard was at the only entryway to the Football Frenzy area.

Pursuant to *Lugo, supra* at 517, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the landowner has a duty to undertake reasonable precautions to protect his invitees. But “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.” *Id.* at 519.

Plaintiff has not shown “special aspects” here. First, plaintiff’s contention that defendant created the danger by placing the rug may be relevant to notice, but not to whether there were special aspects. Second, plaintiff’s contention that the rug was at the only entryway to the Football Frenzy area is factually not supported—there was no testimony regarding the number of points of access to the area. And although *Lugo* indicates that special aspects may be present where a plaintiff must encounter a danger that blocks the only exit to a building, *id.* at 518, there is no similar compulsion requiring one to enter the Football Frenzy area. Plaintiff did not show that the hazard was effectively unavoidable.

Plaintiff also argues that he was distracted by the signage directing him to the Football Frenzy area. He relies in part on *Jaworski v Great Scott Supermarkets, Inc*, 403 Mich 689, 699-700; 272 NW2d 518 (1978). However, that case concerns the contributory negligence of a shopper whose attention was directed at a display when she slipped on “relatively inconspicuous” cottage cheese that had spilled. The storekeeper’s duty was not an issue. The case is not instructive with respect to the open and obvious doctrine as it relates to duty and the concept of “special aspects” as developed in *Lugo, supra* at 512. Rather, *Lugo* indicates that the existence of distractions that are not unusual under the circumstances do not provide an exception to the open and obvious danger doctrine. See *id.* at 522. (“While plaintiff argues that moving vehicles in the parking lot were a distraction, there is certainly nothing ‘unusual’ about vehicles being driven in a parking lot, and, accordingly, this is not a factor that removes this case from the open and obvious danger doctrine.”) Similarly, plaintiff has not established anything unusual about the signage in this case. Therefore, whether he was distracted is immaterial to the

application of the open and obvious danger doctrine.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Bill Schuette