

STATE OF MICHIGAN  
COURT OF APPEALS

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BERNICE HOLMAN,  
Plaintiff-Appellant,

UNPUBLISHED  
February 1, 2007

v

FIRST CONGREGATIONAL CHURCH OF ANN  
ARBOR, MICHIGAN,

No. 272258  
Washtenaw Circuit Court  
LC No. 05-000412-NO

Defendant-Appellee.

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Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff attended a benefit concert on defendant's premises. The floor of the pew row in which plaintiff sat was a step higher than the adjoining aisle, and the edge of the step was marked with yellow tape. Plaintiff stepped into the pew without incident, but at the conclusion of the concert, some two hours later, plaintiff stood to leave the church. She forgot that a step existed at the end of the pew row, stumbled into the aisle, and sustained injuries.

Plaintiff filed suit alleging that she was an invitee on defendant's premises, and that defendant failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10).

The trial court granted defendant's motion for summary disposition, finding that, even assuming that plaintiff was an invitee, defendant owed no duty to plaintiff because the step presented an open and obvious danger, and was not unreasonably dangerous.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A possessor of land has a duty to exercise reasonable care to protect an invitee<sup>1</sup> from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). However, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

We agree with the trial court that this danger was open and obvious, and presented no special aspects that might make it unreasonably dangerous. In her response to defendant's motion for summary disposition, plaintiff admitted that the step was marked with yellow tape on the day the accident occurred. She contended that the tape had been darkened with wear, but admitted that the tape existed. The trial court did not err in finding that the marking on the step was sufficient to render any potential danger posed by the step open and obvious.

We further note that plaintiff acknowledged that she had stepped into the pew row without incident. The condition was therefore known to plaintiff, and she could be expected to appreciate the danger of tripping as she approached the step after the concert concluded. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992).

Finally, plaintiff argues that even if the condition was open and obvious, special aspects made it unreasonably dangerous. We disagree. To be unreasonably dangerous, there must be something unusual about the step's character, location, or condition that gives rise to an unreasonable risk of harm. *Bertrand, supra* at 617. Plaintiff suggests that the lack of adequate lighting made the condition unreasonably dangerous. However, as noted above, despite the level of light, plaintiff was aware of the step, having traversed it on her way into the pew. Plaintiff acknowledged that the accident occurred because she was not watching where she was walking. No evidence showed that the condition was so unreasonably dangerous that it created a risk of death or severe injury, notwithstanding the fact that plaintiff sustained a more severe injury than might be expected under the circumstances. Cf. *Lugo, supra* at 518. We find that no special aspects existed that made the condition of the step unreasonably dangerous.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper

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<sup>1</sup> The trial court assumed that plaintiff was an invitee when deciding defendant's motion for summary disposition. Defendant has not cross-appealed to challenge that decision.