

STATE OF MICHIGAN  
COURT OF APPEALS

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HOPE HANSEN,

Plaintiff-Appellant,

v

IRONWOOD OIL COMPANY, d/b/a HOLIDAY  
STATIONSTORES,

Defendant-Appellee.

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UNPUBLISHED

April 8, 2008

No. 274807

Delta Circuit Court

LC No. 06-018379-NO

Before: Zahra, PJ, and White and O’Connell, JJ

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition for defendant under MCR 2.116(C)(10). This action arose after plaintiff fell in defendant’s store and suffered a fractured elbow. Plaintiff contends that she tripped over the overlap created where a portion of a red mat lay overtop of a brown mat inside of the store. The trial court determined that plaintiff failed to establish causation and, in any event, the condition that resulted in plaintiff’s fall was open and obvious. We affirm. This case is being decided without oral argument under MCR 7.214(E).

A trial court’s decision on a motion for summary disposition is reviewed de novo. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Roberson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

To establish a prima facie case of negligence, a plaintiff must prove: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004). The parties do not dispute that plaintiff was a business invitee on defendant’s premises. Ordinarily, whether a defendant breached a duty of care toward a plaintiff is a question of fact for the jury, but if the moving party can show either that an essential element of the nonmoving party’s case is lacking or that

the nonmoving party's evidence is insufficient to establish an element of the claim, summary disposition is proper. *Latham v Nat'l Car Rental Sys, Inc*, 239 Mich App 330, 340; 608 NW2d 66 (2000).

We need not determine whether plaintiff presented sufficient evidence to establish a prima facie claim of negligence. Assuming that plaintiff presented evidence of a prima facie claim of negligence, plaintiff's claim is nonetheless barred by the open and obvious defense to premises liability claims.

A premises possessor generally owes 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. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, this duty does not encompass removal of an open and obvious danger, unless there are special aspects of the condition that make it effectively unavoidable or give rise to a uniquely high likelihood of harm, rendering the condition unreasonably dangerous. *Id.* at 516-519. Whether a danger is open and obvious depends upon whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. *Hughes v PMG Bldg*, 227 Mich App 1, 10; 574 NW2d 691 (1997). “[I]t is important for courts in deciding summary disposition motions by premises possessors in ‘open and obvious’ cases to focus on the objective nature of the condition of the premises at issue, not on the subjective degree of care used by the plaintiff.” *Lugo supra*, 464 Mich at 523-524.

Here, in viewing the evidence in a light most favorable to plaintiff and assuming that the elevated portion of the red mat was sufficiently dangerous, the evidence establishes that the average person of ordinary intelligence could have discovered the dangerous condition upon casual inspection. Plaintiff testified that after her fall, the lighting in the store “seemed normal.” The photographs of the mats show a condition that is unobstructed from view. Plaintiff does not claim that her view of the overlap was any different. Indeed, plaintiff admitted that there were no objects obstructing her ability to walk across the mats. If there was nothing obstructing her ability to walk across the mats, it is reasonable to infer that there was nothing obstructing her ability to see the overlap. This conclusion is also supported by her testimony that she “noticed that [the red carpet] was there.” Given the position of the red mat behind the brown mat as you enter the store, her statement that she saw the red mat implies her view of the overlap was unobstructed. Additionally, plaintiff relied on one of the photographs<sup>1</sup> during her deposition when describing the uneven surface that she asserts she did not see. Specifically, plaintiff referenced the overlap and stated, “If you see here, when you walk—you can even see right there. See how that comes up? I didn’t know that.” If the overlap is visible to plaintiff in the photograph, it would also have been visible at the time of the accident. The fact that plaintiff might not have seen it is not relevant to whether it was objectively open and obvious. See *Lugo, supra*, 464 Mich at 523-524.

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<sup>1</sup> In context, it appears that plaintiff was pointing to the second of the two photographs that are attached to her brief on appeal (Hansen dep, 64-68; Deposition exhibit no. 3, attached to Hansen dep).

Plaintiff does not suggest that any special aspects existed concerning the assumed dangerous condition. In any event, there is no evidence that the portion of the mats that overlapped was unavoidable or that it created a high risk of severe harm for those who walked over it. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995). Accordingly, the trial court properly concluded that the condition was open and obvious.

Affirmed.

/s/ Brian K. Zahra  
/s/ Helene N. White  
/s/ Peter D. O'Connell