

STATE OF MICHIGAN  
COURT OF APPEALS

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SHANNA JEAN CRUMBY,

Plaintiff-Appellant,

v

MGM GRAND DETROIT, LLC,

Defendant-Appellee.

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UNPUBLISHED

July 29, 2014

No. 315734

Wayne Circuit Court

LC No. 12-002578-NO

Before: MARKEY, P.J., and OWENS and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition in this premises liability action. We affirm.

On February 13, 2011, plaintiff was at MGM Grand Casino in Detroit. Plaintiff was walking through the casino after 2:00 a.m., walked into a stationary flatbed cart, and fell. A casino employee was using the cart to move crowd control stanchions. At the time of plaintiff's fall, the employee had stopped to talk to two casino guests that had asked for directions. Plaintiff sued for negligence. Defendant filed a motion for summary disposition, asserting that plaintiff's claim was barred by the open and obvious doctrine. The trial court granted defendant's motion.

Plaintiff argues that the trial court erred in concluding that plaintiff's claim sounded only in premises liability, and in refusing to consider a claim for ordinary negligence.<sup>1</sup> We disagree.

Defendant moved for summary disposition under MCR 2.116(C)(10). "This Court reviews de novo a trial court's ruling on a motion for summary disposition." *Anzaldúa v Neogen Corp*, 292 Mich App 626, 629; 808 NW2d 804 (2011). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). "This Court reviews the motion by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Auto Club Group Ins Ass'n v Andrzejewski*, 292 Mich App 565, 569; 808

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<sup>1</sup> On appeal, plaintiff does not argue that the open and obvious doctrine would not bar her claim if the case is treated as a premises liability action.

NW2d 537 (2011). “Summary disposition pursuant to MCR 2.116(C)(10) is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *McCoig Materials, LLC v Galui Const, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ.” *Bronson Methodist Hosp v Home-Owners Ins Co*, 295 Mich App 431, 441; 814 NW2d 670 (2012).

Michigan law distinguishes between claims resulting from premises liability and ordinary negligence. *Buhalis v Trinity Continuing Care Servs*, 296 Mich App 685, 692; 822 NW2d 254 (2012). “[T]he gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim.” *Id.* at 691-692, quoting *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710–711; 742 NW2d 399 (2007). “In a premises liability claim, liability emanates merely from the defendant’s duty as an owner, possessor, or occupier of land.” *Laier v Kitchen*, 266 Mich App 482, 493; 702 NW2d 199 (2005). The duty owed under a premises liability theory is “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). In contrast, an action sounds in ordinary negligence where a plaintiff is injured because of the negligence of another or another’s servant. *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001).

A claim based on one theory does not automatically preclude a claim based on an independent theory of liability. *Laier*, 266 Mich App at 493. An action sounds in premises liability when an injury develops because of a condition on the land, rather than from activity or conduct that created the condition. *Woodman v Kera, LLC*, 280 Mich App 125, 153; 760 NW2d 641 (2008). “If the plaintiff’s injury arose from an allegedly dangerous condition on the land, the action sounds in premises liability rather than ordinary negligence; this is true even when the plaintiff alleges that the premises possessor created the condition giving rise to the plaintiff’s injury.” *Buhalis*, 296 Mich App at 692.

Plaintiff asserts that her claim sounds in ordinary negligence and should not have been dismissed because the casino employee was negligent in his placement of the cart, failure to warn plaintiff about the cart, and failure to adequately perform his job duties. We disagree. Here, the casino employee stated that he parked the cart in a stationary position in the aisle for several minutes because two other casino guests asked him for directions and, while the employee was talking to the guests, plaintiff tripped over the cart. Plaintiff’s injury occurred because of a condition on the land—the stationary cart and its placement in the aisle—rather than any conduct by the employee. See *Woodman*, 280 Mich App at 153. While the casino employee may have created the condition that gave rise to plaintiff’s injury, the injury arose from the allegedly dangerous condition on the land. See *Buhalis*, 296 Mich App at 692. Therefore, the action sounded in premises liability rather than ordinary negligence, and the trial court did not err in granting the motion for summary disposition.

Affirmed. Defendant, the prevailing party, may tax costs. MCR 7.219.

/s/ Jane E. Markey

/s/ Donald S. Owens

/s/ Karen M. Fort Hood