

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BRIAN M. BISHOP and CAROLANN BISHOP,

Plaintiffs-Appellants,

v

H. R. KRUEGER MACHINE TOOLS, INC.,

Defendant-Appellee.

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UNPUBLISHED  
December 18, 2003

No. 242898  
Oakland Circuit Court  
LC No. 01-034475-NO

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Brian M. Bishop went to defendant's premises to give a sales presentation. After the presentation, defendant's employee escorted Bishop to the same stairway he had used to ascend to the second floor. The stairway was made up of approximately twelve steps. Bishop, who was six feet tall and weighed approximately 300 pounds, began to descend the stairway on the left, so that he could utilize the only available handrail. After descending two stairs, Bishop observed someone at the bottom of the stairs, coming up. Bishop then moved to the right to the side of the staircase without a handrail. At the third or fourth stair, his foot "got off the end of the stair;" he lost his balance, reached to the right for the absent handrail, and fell, sustaining injuries.

Plaintiffs filed suit, alleging that Bishop was on defendant's premises as a business invitee, and that defendant negligently failed to maintain the premises in a safe condition and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it had no duty to warn Bishop of the condition of the stairway because the condition was open and obvious, and that the condition was not unreasonably dangerous. The trial court granted the motion, finding that reasonable minds could not differ on the issue whether the condition of the stairway was open and obvious. The trial court concluded that no special aspect of the stairway made it unreasonably dangerous notwithstanding its open and obvious condition.

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 from an unreasonable risk of harm caused by a dangerous condition on the land. A possessor of land may be held liable for injuries resulting from negligent maintenance of 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).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id.*, 612. 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). 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. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Steps are encountered as an everyday occurrence. A reasonably prudent person will watch where he or she is going and take appropriate care for his or her own safety. *Bertrand, supra*, 616. The trial court correctly found that reasonable minds could not differ on whether any danger posed by the stairway was open and obvious. *Novotney, supra*.

Plaintiffs further contend that even if the condition of the stairway was open and obvious, it still presented an unreasonable risk of harm. We disagree. The stairway was equipped with a safety device, the hand rail. Plaintiffs contend that Bishop's size forced him to move to the side without the handrail to allow another person to pass. However, Bishop's size was not a special aspect of the stairway itself. *Lugo, supra*. Moreover, Bishop chose to let go of the rail and move aside when he saw a person begin to ascend the stairs. He could have continued down the stairway using the handrail, or he could have moved aside and remained there until the other person passed and he could resume his descent with the aid of the rail. Plaintiffs failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. Summary disposition was proper.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Janet T. Neff  
/s/ Helene N. White