

STATE OF MICHIGAN
COURT OF APPEALS

MELISSA CREMEANS,

Plaintiff-Appellant,

v

HOME PROPERTIES OF NEW YORK,

Defendant-Appellee.

UNPUBLISHED

October 14, 2004

No. 248006

Wayne Circuit Court

LC No. 02-209526-NI

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right 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 sustained injuries when she fell while descending the steps of a building owned by defendant. She filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe manner by failing to reinstall a handrail and to maintain the property in compliance with the building code. The trial court granted defendant’s motion for summary disposition pursuant to MCR 2.116(C)(10), concluding that the condition of the steps was open and obvious, and that plaintiff could not establish that any violation of the building code proximately caused her fall.

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. 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 negligence case. *Id.* at 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 an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from the 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).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Steps are encountered as an everyday occurrence. A reasonably prudent person will watch where she is going and will take appropriate steps for her own safety. *Bertrand, supra* at 616. The steps on which plaintiff slipped were not blocked and were equipped with a handrail. Plaintiff stated that she noticed the condition of the steps when she approached them to enter the building. The trial court correctly found that reasonable minds could not differ on whether the condition of the steps was open and obvious. *Novotney, supra*.

The open and obvious danger doctrine cannot be relied upon to avoid a specific statutory duty. *O'Donnell v Garasic*, 259 Mich App 569, 581; 676 NW2d 213 (2003). Plaintiff's complaint did not allege that defendant breached a specific statutory duty, such as that imposed on a lessor to maintain the premises in reasonable repair, MCL 554.139(1), but rather alleged that defendant failed to maintain the premises in compliance with the building code. While the violation of a building code can be some evidence of negligence, not every violation supports a special aspects analysis in avoidance of the open and obvious danger doctrine. The issue is whether something unusual about the steps because of their character, location, or condition gives rise to an unreasonable risk of harm. *Bertrand, supra* at 617. Nothing about the character of the steps forced a user to walk on the side that lacked a handrail, as plaintiff did when she descended the steps. She did not allege that the height or width of the steps caused her to fall. Plaintiff failed to demonstrate the existence of any special aspect that made the condition of the steps unreasonably dangerous in spite of their open and obvious nature. *Lugo, supra*.

Plaintiff acknowledged that she did not know what caused her to fall from the steps. She did not present evidence to establish why the accident occurred as it did. To establish causation, a plaintiff must prove that it is more likely than not that, but for the defendant's breach of duty, the injury would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994); *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977). The possibility that a breach of the building code by defendant caused plaintiff to sustain injuries is not sufficient to establish causation. *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell