

STATE OF MICHIGAN
COURT OF APPEALS

SHIRLEY PILETTE,

Plaintiff-Appellant,

v

ANGELE LUOKKALA,

Defendant-Appellee.

UNPUBLISHED

July 10, 2008

No. 278033

Wayne Circuit Court

LC No. 06-621274-NO

Before: Owens, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant’s motion for summary disposition. We affirm.

This premises liability action arises from a slip-and-fall where plaintiff suffered an injury to her hip. On appeal, plaintiff argues that a genuine issue of material fact exists regarding whether defendant knew or should have known of a dangerous condition in her backyard, thereby obligating defendant to remedy the condition. We disagree.

We review de novo the trial court’s grant of summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). “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 might differ.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). “The court may not make factual findings or weigh credibility in deciding a motion for summary disposition.” *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993). “Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

To determine a landowner’s duty under Michigan’s premises liability law, we must first determine whether the person injured on the landowner’s premises was a trespasser, a licensee, or an invitee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). In the present case, it is undisputed that plaintiff was not a trespasser. However, the parties incorrectly classify plaintiff as an invitee. Instead, we conclude that plaintiff is a licensee.

“In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose.” *Id.* at 604. Conversely, social guests receive only licensee

status and are generally presumed to accept the ordinary risks associated with their visit. *Id.* at 596. Defendant's property was not held out for any commercial purpose and it is undisputed that the reason for plaintiff's visit was purely social in nature. Therefore, plaintiff was a licensee and not an invitee. A landowner only has a duty to warn a licensee of "any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know" of them. *Id.* A landowner owes no duty to a licensee to inspect the premises or make sure it is in a safe condition before the licensee arrives. *Id.* Accordingly, defendant did not owe plaintiff any duty to make her backyard safe for plaintiff's visit. Defendant's only duty was "to warn of hidden dangers [she knew] or has reason to know of, and only if [plaintiff did] not know or have reason to know of the dangers involved." *Burnett v Bruner*, 247 Mich App 365, 378; 636 NW2d 773 (2001).

In *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001), this Court held that a landowner has no duty to take any steps to safeguard licensees from open and obvious conditions on the land. Furthermore, a landowner is only liable for injury caused by an open and obvious condition if "special aspects" exist, making the condition unreasonably dangerous or effectively unavoidable. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517–519; 629 NW2d 384 (2001). In *Lugo*, our Supreme Court provided examples of special aspects, such as a very deep, unguarded pit in the middle of a parking lot or standing water covering the floor at the only exit of a store. *Id.* at 518.

Several months before plaintiff's injury, her son cut down a tree that had been struck by lightning. The large limbs and branches that had been cut were scattered throughout defendant's backyard when plaintiff came to visit. Plaintiff was in the backyard with her dog when she slipped and fell, apparently on a broken piece of tile from a drainpipe. Both parties were fully aware that branches were in the backyard. However, there is no evidence indicating that defendant knew of the broken tile. Plaintiff admits that she was not looking down when she walked, but she alleges that when she saw the tile after her fall, she noticed that it was hidden underneath branches. Thus, the question becomes whether the presence of scattered branches was an open and obvious condition, putting plaintiff on notice of the danger of slipping or tripping on the branches themselves or on something concealed underneath them, or whether the tile was a hidden danger that defendant had reason to know of and a duty to warn plaintiff about.

In *Royce v Chatwell Club Apartments*, 276 Mich App 389, 392; 740 NW2d 547 (2007), this Court determined that the test whether a danger is open and obvious is "whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger on casual inspection." The *Royce* Court then noted that "by its very nature, a snow-covered surface presents an open and obvious danger because of the high probability that it may be slippery." *Id.* at 393–394 (quoting *Ververis v Hartfield Lanes (On Remand)*, 271 Mich App 61, 67; 718 NW2d 382 (2006)). The *Royce* Court concluded that the risk of slipping and falling on black ice covered with snow does not present sufficient special aspects to remove it from the open and obvious doctrine. *Id.* at 395–396. Although the plaintiff in *Royce* did not realize she had slipped on black ice until after she tried to pull herself up, the *Royce* Court held that because the snowy condition of the parking lot was open and obvious and no special aspect making the condition unreasonably dangerous existed, the defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) should have been granted. *Id.* at 396.

Similarly, in this case, a yard scattered with limbs and branches presents an open and obvious danger. Because plaintiff was not looking down as she walked, it is unclear whether the tile was concealed or not. Nevertheless, even if the tile was completely covered, it is reasonable to expect that an average person would appreciate the danger posed by walking in a yard full of branches and limbs. Like black ice under snow, a reasonable person would anticipate that a yard covered in branches and limbs could contain tripping or slipping hazards.

Plaintiff argues that she was not actually walking “through” the branches, but was walking along the edges of them when she slipped. If plaintiff slipped on the tile and the tile was completely hidden beneath branches, it is reasonable to conclude that plaintiff walked through the branches that covered the tile. If, however, plaintiff was only walking along the “edges” of some branches, yet still slipped on the tile, it seems equally reasonable to conclude that at least a portion of the tile was protruding from the edges of the branches, meaning that the tile was not completely concealed. In both situations, there would be an open and obvious risk of stepping on something, either the branches or the tile, which could cause plaintiff to fall.

In addition, we do not find the conditions in defendant’s backyard comparable to an unavoidable wet floor or an extremely deep hole in a parking lot. There is no evidence to show that the condition was unreasonably dangerous or effectively unavoidable. We hold that the potential risks posed by the branches and limbs would be apparent to a reasonable person and, therefore, the dangerous condition was an open and obvious one without any special aspects. Defendant owed plaintiff no duty to remedy the conditions in her backyard or warn plaintiff of the risk of falling. Accordingly, the trial court did not err when it granted defendant’s motion for summary disposition.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O’Connell
/s/ Alton T. Davis