

STATE OF MICHIGAN
COURT OF APPEALS

DARRELL CARRUTHERS,
Plaintiff-Appellee,

UNPUBLISHED
May 25, 2010

v

DORIS HALEY,

Defendant-Appellant,

No. 290707
Wayne Circuit Court
LC No. 08-100948-NO

and

NATIONAL FIRE & RESTORATION
SPECIALISTS, INC., d/b/a NATIONAL FIRE
RESTORATION COMPANY,

Defendant.

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Defendant Doris Haley¹ appeals by leave granted from the trial court's order that denied her motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After living at Ms. Haley's house for three months, plaintiff Darrell Carruthers allegedly fell on the basement steps. The only issue before us is whether the condition of the steps and the absence of a handrail made them unreasonably dangerous.² Some evidence showed that the

¹ The trial court dismissed the corporate defendant from the case.

² Ms. Haley conceded, for purposes of her motion only, that Mr. Carruthers was an invitee. The parties do not dispute that Mr. Carruthers knew about the condition of the steps, so Ms. Haley only owed him a duty if the stairs were unreasonably dangerous. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001).

steps were “worn in the middle” and that there was no handrail along the stairway. Evidence did not show that the stairs were poorly lit. However, the stairway was the only means of getting to the basement, and Mr. Carruthers asserted that Ms. Haley had asked him to bring some compact discs down to the basement. According to Mr. Carruthers, if he did not do as Ms. Haley asked, she would “probably” kick him out of the house.

Ms. Haley moved for summary disposition and argued that the mere absence of a handrail and minor irregularities in the steps did not create an unreasonable danger. The trial court disagreed and ruled that the steps presented a high risk of severe injury. The court cited two cases for the proposition that the steps’ condition, combined with the absence of a handrail, created a question of fact for the jury, *Wagner v Lyons-Muir Church*, unpublished opinion per curiam of the Court of Appeals, issued October 25, 2005 (Docket No. 262496), and *Dukes v Glen of Michigan*, 31 Mich App 500; 188 NW2d 46 (1971).

Ms. Haley moved for reconsideration and argued that the cases cited by the trial court are factually distinguishable. Ms. Haley asserted that, unlike the deteriorating steps in *Wagner*, the condition of the stairs in her home did not change and Mr. Carruthers was aware of their condition. Ms. Haley further noted that the “special aspect” of the steps in *Wagner* was the condition of the stairs themselves, not the absence of a handrail. Ms. Haley also noted that *Dukes* was decided before the two cases defining the term “special aspect” in the context of premises liability, *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001), and *Bertrand v Alan Ford*, 449 Mich 606; 537 NW2d 185 (1995). The trial court denied the motion.

We review de novo a trial court’s decision to grant or deny a motion for summary disposition. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

A premises possessor owes a duty to use reasonable care to protect invitees from an unreasonable risk of harm caused by dangerous conditions on the premises unless the dangers are known to the invitee or are open and obvious. *Lugo*, 464 Mich at 516. A danger is open and obvious if it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). However, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the possessor must take reasonable steps to protect invitees from harm. *Lugo*, 464 Mich at 517. Special aspects are those that “give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided.” *Id.* at 519. Neither a common condition nor an avoidable condition is uniquely dangerous. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 8-9; 649 NW2d 392 (2002).

Under Michigan law, it is well established that steps need not be “foolproof.” *Bertrand*, 449 Mich at 616-617. Falls involving steps give rise to a claim only where there is something unusual about the character, location, or surrounding conditions of the steps that create an unreasonable risk of harm, despite the invitee’s knowledge of their condition. *Id.* at 613, 617. The cases cited by Ms. Haley illustrate that this Court will not find that steps create an

unreasonably dangerous condition if there is no handrail, even if there are other common irregularities such as steepness, ice, slanted treads, dirt, etc. Further, *Wagner* involved a much different situation because, in that case, a step broke as the plaintiff descended the stairs. Here, there was nothing unusual about the steps being worn in the middle and Ms. Haley had no reason to anticipate harm when Mr. Carruthers and others traversed the steps on other occasions without incident.

Mr. Carruthers emphasizes that the steps were the only way into or out of the basement, and argues that unavailability alone is sufficient to state a claim. This, however, is not the law. There must be an unreasonable risk of harm present, and here there was not. Were we to agree that the *steps* might have been unavoidable, the harm was not, as evidenced by the fact that the steps were traversed numerous times with no harm resulting.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto