

STATE OF MICHIGAN
COURT OF APPEALS

JOHN PRESTON,

Plaintiff-Appellee,

v

LOVING CARE FLOWERS, INC. d/b/a DELTA
FLOWERS,

Defendant-Appellant.

UNPUBLISHED
December 13, 2011

No. 301241
Eaton Circuit Court
LC No. 09-001030-NO

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

In this premises liability case, defendant appeals by leave granted from an order of the trial court granting in part plaintiff's motion for reconsideration. The trial court had previously granted defendant's motion for summary disposition and dismissed plaintiff's claim. On reconsideration, the trial court concluded that a genuine issue of material fact existed regarding whether the hazardous condition at issue was effectively unavoidable and thus allowed plaintiff's claim to proceed. Because there was no genuine issue of material fact that the open and obvious condition causing plaintiff's fall contained no special aspects that give rise to a uniquely high likelihood of harm, we reverse and remand.

On May 13, 2008, plaintiff was invited into a back office at defendant flower shop to engage in a business meeting with the store's owner. To reach the back office, plaintiff had to walk through a work room where floral arrangements were made. According to plaintiff, there was nothing on the floor when he walked to the back office. However, when plaintiff attempted to leave after an approximate 30 to 45 minute meeting, he saw that the floor was covered in "floral debris." Plaintiff slipped and fell while attempting to walk through the space, sustaining a torn rotator cuff. Plaintiff thereafter initiated the instant lawsuit, asserting that defendant's negligence caused his injuries. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) contending that the condition that caused plaintiff's fall was open and obvious, with no special aspects to remove the condition from the open and obvious doctrine. As previously indicated, the trial court initially granted summary disposition in defendant's favor, but subsequently found that a question of fact existed as to whether the condition causing plaintiff's fall contained a special aspect such that defendant could remain liable for plaintiff's injuries despite the open and obviousness of the condition.

We review a trial court's decision on a motion for summary disposition de novo. *Woodman v Kera LLC*, 486 Mich 228, 236; 785 NW2d 1 (2010). When reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). A genuine issue of material fact exists when the record "leaves open an issue upon which reasonable minds might differ." *West v Gel Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

On appeal, defendant contends that the trial court erred in finding the existence of a genuine issue of material fact concerning whether the condition causing plaintiff's fall was effectively unavoidable so as to fall outside the protections afforded by the "open and obvious" doctrine. We agree.

Under Michigan premises liability law, premises possessors have a duty to exercise reasonable care to protect invitees from any unreasonable risks of harm caused by dangerous conditions on their land, unless that danger is open and obvious. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, "if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk." *Id.* at 517. Special aspects exist when dangers are effectively unavoidable or create an unreasonably high risk of severe harm. *Id.* at 518.

Here, plaintiff testified at deposition that when he walked toward the back office, he did not notice any floral debris on the floor, but when he retraced his route to leave the building at most 45 minutes later, he saw two people working at a workbench and "stuff kind of all around the table." According to plaintiff, it appeared that there were leaves, stems, and petals "scattered all over" so he tried to watch his step, but that he slipped and fell in any event. Plaintiff testified that he did not ask anyone to remove the debris from his path and that he "didn't really consider" going around the work bench the opposite way but instead retraced his steps the way he entered the business. Plaintiff also provided an affidavit wherein he swore that he could not have avoided the debris no matter which way he walked around the workbench. Taking the plaintiff's assertions as true, we nevertheless find that summary disposition was appropriate in defendant's favor, for two reasons.

First, plaintiff clearly admitted to seeing the floral debris and further indicated that two employees were present and near him when he fell. Plaintiff could easily have asked the employees to remove the debris or for assistance in navigating around it, but did neither. Premises possessors "are not absolute insurers of the safety of their invitees," *Lugo*, 464 Mich at 517, and the overriding public policy is to encourage people to take reasonable care for their own safety. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995). If plaintiff were effectively "trapped" by the debris, it is reasonable to place a duty upon him to ask for readily available assistance before attempting to navigate over the hazard.

Second, the critical inquiry in *Lugo* is "whether there is evidence that creates a genuine issue of material fact regarding whether there are truly 'special aspects' of the open and obvious condition that differentiate the risk from typical open and obvious risks so as to create an

unreasonable risk of harm” *Id.* 464 Mich at 517-518. As emphasized in that case, typical open and obvious dangers (like typical potholes in a parking lot) do not give rise to special aspects--“only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine.” *Id.* at 519. Floral debris on the floor near the workstation of a floral shop is a “typical” open and obvious danger, like a typical pothole in a parking lot. There is nothing unusual about the presence of floral debris in that setting and, more importantly, nothing suggests that the debris at issue created an unreasonable risk of harm despite its open and obviousness. The hazard therefore presented no special aspect sufficient to remove it from the realm of the open and obvious doctrine and summary disposition in defendant’s favor was thus appropriate. Because this conclusion is dispositive of plaintiff’s claim, we need not address the parties’ further arguments.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto