

STATE OF MICHIGAN
COURT OF APPEALS

LEWIS SPARKS,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellee.

UNPUBLISHED

July 31, 2012

No. 303608

Oakland Circuit Court

LC No. 2010-110315-NO

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

In this premises liability action, Lewis Sparks appeals as of right the trial court's grant of summary disposition¹ in favor of William Beaumont Hospital ("WBH"). We affirm.

"[A] motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the complaint."² "When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party."³ Summary disposition "should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."⁴ We review "a trial court's decision to grant or deny summary disposition" de novo.⁵

¹ MCL 2.116(C)(10).

² *Dalley v Dykema Gossett*, 287 Mich App 296, 305 n 3; 788 NW2d 679 (2010) (quotations, citations and emphasis omitted).

³ *Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 56; 744 NW2d 174 (2007).

⁴ *Woodman v Kera, LLC*, 280 Mich App 125, 134; 760 NW2d 641 (2008) (citation and quotation omitted).

⁵ *Benton v Dart Prop, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006).

On appeal, Sparks argues that the trial court erred when it found that his complaint alleged premises liability, and dismissed his argument that the complaint alleged negligence based on a theory of vicarious liability. We disagree.

“In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered damage.”⁶ “The duty owed by a landowner depends on the status of the injured party at the time of the injury.”⁷ “An invitee is on the owner’s premises for a purpose mutually beneficial to both parties[,]” while “a licensee is on the premises of another because of some personal unshared benefit and is merely tolerated on the premises by the owner.”⁸ Here, WBH concedes that Sparks was an invitee on its premises. “[T]he law recognizes that a special relationship exists between landowners and their invitees[.]”⁹ Thus, the duty of care owed by WBH to an invitee is to warn the “invitee of any known dangers” and “make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards.”¹⁰

Review of the complaint reveals that Sparks pled the necessary facts for a cause of action for premises liability by an invitee. Sparks’ complaint contends that he “was on the premises of [WBH],” “for the purpose of visiting a patient,” when he tripped, fell and injured his hip. Sparks’ complaint also asserts that WBH owed him a “duty to keep the hospital room clear of hazards which could not be seen by others and to specifically store medical equipment in such a manner so as to not create a tripping hazard with the public[.]” The complaint further claims that WBH’s breach of its duty caused his damages. As Sparks’ complaint clearly alleges premises liability, the trial court did not err.

The trial court found that summary disposition was proper because there was no genuine issue of material fact regarding whether (1) the tubing Sparks allegedly tripped on was a dangerous condition, (2) WBH had notice of its presence, and (3) WBH “failed to act reasonably to remedy the defect.” Sparks argues that the trial court erred in granting summary disposition because WBH had notice that a hazardous condition existed. We disagree.

Sparks alleges that he tripped on tubing attached to medical equipment on the premises of WBH that was a hazardous condition of which WBH had notice. There was no evidence presented, however, to support that the tubing was in fact what Sparks tripped over. Sparks, who

⁶ *Id.*

⁷ *Taylor v Laban*, 241 Mich App 449, 452; 616 NW2d 229 (2000) (citation and quotation omitted).

⁸ *Id.* at 454 (citation and quotation omitted).

⁹ *Id.*

¹⁰ *Price v Kroger Co of Mich*, 284 Mich App 496, 500; 773 NW2d 739 (2009) (quotation and citation omitted).

was the only witness to the incident who was deposed,¹¹ testified that when he tripped, he was not looking at the ground. Additionally, after he tripped, he did not look down to see what he had tripped over. While Sparks testified that he believed that he had tripped on tubing attached to medical equipment, he also explained that he could not be certain. Moreover, although Sparks informed multiple individuals that he tripped over the tubing, none of those individuals actually witnessed the incident. Because the identity of what Sparks tripped over is purely speculative,¹² Sparks cannot demonstrate that WBH had notice of an alleged hazardous condition.¹³ Accordingly, summary disposition was proper.¹⁴

Affirmed.

/s/ Michael J. Talbot
/s/ Deborah A. Servitto

¹¹ Sparks' fiancé allegedly witnesses the fall; however, she passed away before she could be deposed.

¹² *D'Ambrosio v McCreedy*, 225 Mich App 90, 96; 570 NW2d 797 (1997).

¹³ *Price*, 284 Mich App at 500.

¹⁴ *Woodman*, 280 Mich App at 134.

In light of our holding that the trial court properly granted summary disposition on the notice issue, we need not address the open and obvious issue. See *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 39 n 1; 772 NW2d 801 (2009).