

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA MARKS,

Plaintiff-Appellant,

v

REHABILITATION INSTITUTE, INC., d/b/a
REHABILITATION INSTITUTE OF
MICHIGAN, and MARTHA SHAMELY,

Defendants-Appellees.

UNPUBLISHED

April 4, 2006

No. 258460

Wayne Circuit Court

LC No. 03-301030-NO

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition in this action involving claims for premises liability and negligence. We affirm in part, reverse in part, and remand.

Plaintiff was injured when defendant Martha Shamley, a patient care associate at defendant Rehabilitation Institute, Inc. (hereafter the "hospital"), opened a closet door into a hallway at the hospital, striking plaintiff.

We first address plaintiff's claim that the trial court erred in dismissing her premises liability claim.

A trial court's grant of summary disposition is reviewed de novo, on the entire record, to determine whether the prevailing party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion for summary disposition brought under MCR 2.116(C)(10),¹ the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*,

¹ Defendants moved for summary disposition under MCR 2.116(C)(8) and (10). The trial court did not state under which subrule it granted the motion. Because the court considered evidence beyond the pleadings, however, it is apparent that the motion was granted under MCR 2.116(C)(10). See MCR 2.116(G)(5).

451 Mich 358, 361-362; 547 NW2d 314 (1996). A question of fact exists when reasonable minds could differ on the conclusions to be drawn from the evidence. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 398-399; 491 NW2d 208 (1992).

It is undisputed that plaintiff was present at the hospital for business purposes and, therefore, was an invitee. See *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993). “[A]n invitee is entitled to the highest level of protection under premises liability law.” *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). A “landowner has a duty of care, not only to warn [an] invitee of any known dangers, but also to 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.” *Id.*

However, in *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992), our Supreme Court stated:

[W]here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee *unless he should anticipate the harm despite knowledge of it on behalf of the invitee*. [Emphasis added.]

See, also, *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995). Thus, “the general rule is that a premises possessor is not required to protect an invitee from open and obvious dangers, but, 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.” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517; 629 NW2d 384 (2001). “[T]he critical question 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, i.e., whether the ‘special aspect’ of the condition should prevail in imposing liability upon the defendant or the openness and obviousness of the condition should prevail in barring liability.” *Id.* at 517-518. 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).

In the present case, the closet door that caused plaintiff’s injury was plainly visible. Further, it is a common occurrence for doors to open into a hallway, especially in a building such as a hospital. Because the focus is “on the objective nature and condition of the premises,” the fact that Shamely was inside the closet does not make the condition unreasonably dangerous. Plaintiff failed to show that there was anything special, unusual, or unique about this door that would “give rise to a uniquely high likelihood of harm or severity of harm.” See *Lugo, supra* at 519. Rather, “an ‘ordinarily prudent’ person . . . would typically be able to see the [door] and avoid it.” *Id.* at 520, quoting *Bertrand, supra* at 615. Further, “[u]nlike falling an extended distance, it cannot be expected that a typical person [hit by an opening door] would suffer severe injury.” See *Lugo, supra* at 520. Plaintiff offered no evidence to distinguish this door from other ordinary, common doors in terms of the danger it presented. See *Lugo, supra* at 522 n 5. Moreover, we believe that an ordinary person could have avoided being hit by the door by the

exercise of ordinary care, particularly since it was equipped with a hydraulic device designed to slow it down, and could have stopped or stepped aside.² The trial court correctly concluded that the danger presented by the door was open and obvious.

Plaintiff's reliance on *Spear v Wineman*, 335 Mich 287, 289-290; 55 NW2d 833 (1952), and *Brown v Nichols*, 337 Mich 684, 686, 688-690; 60 NW2d 907 (1953), is misplaced because neither of those cases address the open and obvious doctrine.

Concerning plaintiff's claim that the door violates Michigan Building Code, while the code requires hallways to remain unobstructed, it does not consider a door swing to be an obstruction, and it expressly allows doors to swing into a hallway, within prescribed limits. Plaintiff has not demonstrated that those limits were exceeded here.

For these reasons, the trial court properly dismissed plaintiff's premises liability claim. We conclude, however, that summary disposition was improperly granted with respect to plaintiff's negligence claim.

"To establish a prima facie case of negligence, a plaintiff must introduce evidence sufficient to establish that (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach was a proximate cause of the plaintiff's injuries, and (4) the plaintiff suffered damages." *Spikes v Banks*, 231 Mich App 341, 355; 586 NW2d 106 (1998). Whether defendant owed a duty to plaintiff is a question of law. See *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587. In determining whether a duty exists, courts look to variables such as (1) the foreseeability of harm, (2) the degree of certainty of injury, (3) the existence of a relationship between the parties involved, (4) closeness of the connection between the conduct and the injury, (5) blame attached to the conduct, (6) the possibility of any future harm, and (7) the burdens and consequences of imposing a duty and the resulting liability for breach. *Terry v Detroit*, 226 Mich App 418, 424; 573 NW2d 348 (1997).

The common law "imposes on every person engaged in the prosecution of any undertaking an obligation to use due care, or to so govern his actions as not to unreasonably endanger the person or property of others." *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967); see, also, *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 142-143; 273 NW2d 811 (1978). Thus, Shamely owed plaintiff a duty to open the door with ordinary care.

Plaintiff presented evidence that Shamely opened the door suddenly, without first checking the hallway. Plaintiff also presented evidence that the accident could have been avoided had Shamely opened the door more slowly. Thus, plaintiff made out a prima facie case of ordinary negligence by showing that Shamely owed her a duty of ordinary care, that Shamely breached that duty by opening the door carelessly, and that plaintiff suffered damages as a proximate result of Shamely's negligence.

Further, as plaintiff argues, the open and obvious doctrine applies only to premises liability claims, not claims of ordinary negligence. *Laier v Kitchen*, 266 Mich App 482, 487,

² There is no indication that the hydraulic device malfunctioned.

489-490, 494; 702 NW2d 199 (2005). Therefore, the open and obvious doctrine is not dispositive of plaintiff's ordinary negligence claim.

Plaintiff also presented evidence that Shamely was required to use the closet in the course of her employment, and was doing so at the time of the accident. Thus, plaintiff made out a prima facie case of the hospital's vicarious liability for Shamely's negligence, if any. See *Rogers v J B Hunt Transport, Inc*, 466 Mich 645, 651; 649 NW2d 23 (2002).

Because plaintiff established a question of material fact concerning Shamely's negligence, and the hospital's vicarious liability, the trial court erred in dismissing plaintiff's ordinary negligence claim.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot