S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

FATEN YOUSIF, Plaintiff-Appellant,	UNPUBLISHED August 16, 2005
v	No. 246680 Macomb Circuit Court
WALLED MONA, Defendant-Appellee.	LC No. 02-001903-NO ON REMAND

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Plaintiff originally appealed as of right from a circuit court order granting defendant's motion for summary disposition in this premises liability action. We reversed and remanded the case, concluding that "a genuine, material, factual dispute existed regarding whether . . . a loose carpet loop located on a landing above a flight of stairs created an unreasonable risk of harm of which defendant was aware or should have been aware and of which plaintiff was not aware." *Yousif v Mona,* unpublished opinion per curiam of the Court of Appeals, issued June 8, 2004 (Docket No. 246680), p 2. Defendant filed an application for leave to appeal in the Supreme Court, which has now remanded the case to us and instructed us "to articulate the material facts in issue on the question of whether the carpet pulls represented an unreasonable hazard, of which defendant had a duty to warn plaintiff." The Supreme Court has retained jurisdiction in the case.

We stated the following in our previous opinion:

> The duty owed by a landowner to a visitor depends on whether the visitor is an invitee, a licensee, or a trespasser. *Stitt v Holland Abundant Life Fellowship,* 462 Mich 591, 596; 614 NW2d 88 (2000). "[I]nvitee status must be founded on a commercial purpose for visiting the owner's premises." *Id.* at 607. Plaintiff was visiting defendant's home for a family function when she fell down a stairway after allegedly catching her heel on a loose carpet thread loop on a landing at the top of the stairway. Defendant's home was not held open for a commercial purpose and thus plaintiff, as a social guest, was a licensee. *Taylor v Laban,* 241 Mich App 449, 453; 616 NW2d 229 (2000).
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> "Ordinarily, a possessor owes at least a marginal duty of care to his licensees." *Altairi v Alhaj,* 235 Mich App 626, 634; 599 NW2d 537 (1999). A landowner does not have a duty of inspection or affirmative care to make the

> premises safe for the licensee's visit. *Stitt, supra* at 596; *Burnett v Bruner,* 247 Mich App 365, 373, 376; 636 NW2d 773 (2001). He "owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger [and] the risk involved." *Kosmalski v St John's Lutheran Church,* [261 Mich App 56, 65; 680 NW2d 50 (2004)]. The landowner "has no obligation to take any steps to safeguard licensees from conditions that are open and obvious." *Pippin v Atallah,* 245 Mich App 136, 143; 626 NW2d 911 (2001).
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> Plaintiff's claim on appeal is that the trial court erred in granting defendant's motion because there existed genuine issues of fact regarding the open and obvious nature of the defect, regarding whether the defect presented an unreasonable risk of harm about which defendant knew or should have known, and regarding whether plaintiff herself did not know or have reason to know of the defect or the risk of harm it presented.
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> The evidence suggested that defendant was aware of the particular loose thread loop at issue and that a visitor to his home may not have been aware of such a thread upon casual inspection. We conclude that a genuine, material, factual dispute existed regarding whether such a loose carpet loop located on a landing above a flight of stairs created an unreasonable risk of harm of which defendant was aware or should have been aware and of which plaintiff was not aware. Consequently, defendant's motion for summary disposition should have been denied. *Kosmalski, supra* at [65]. [*Yousif, supra* at 1-2 (footnote omitted).]

As noted, defendant owed a duty to warn plaintiff "of any hidden dangers [he knew] or ha[d] reason to know of, if the hidden danger involve[d] an unreasonable risk of harm and [plaintiff did] not know or have reason to know of the hidden danger and the risk involved." *Kosmalski, supra* at 65.

The evidence presented in the circuit court clearly created a question of fact regarding whether defendant was aware, or should have been aware, of the carpet loop at issue before plaintiff's fall. Indeed, in his own appellate brief, defendant refers to a document in which he stated the following:

> I saw thread outside of bathroom door[1] [sic] and did not think it was a problem. The thread was there for quite some time – I think the pull (thread pull) developed as a result of in-home weekly steam cleaning. I did not inform my sister or anyone else outside my house of the pull because I did not think it was a problem.

Defendant later stated, during his deposition, that he had not been aware of the particular carpet thread at issue but that he had been aware of other loose threads in the carpet. He testified that the carpet "would snag" and that "it's very eas[y] . . . to pull the thread off that carpet." This

[1] We note that the bathroom door referred to by defendant is located near the top of the set of stairs down which plaintiff fell.

evidence, viewed as a whole, created a question of fact concerning whether the particular carpet loop at issue was something about which defendant knew or should have known.

Moreover, given the clear evidence that the loop was located at the top of a set of stairs, there existed a question of fact concerning whether the loop posed a considerable danger to visitors. Indeed, the location of the carpet loop is a key factor with regard to the question of "unreasonable risk." *Id.* While the loop arguably would not have posed an unreasonable risk of harm if it had been in a different location, this loop was located in a spot where tripping on it could cause serious injuries.

Finally, the evidence created a question of fact regarding whether the risk posed by the carpet loop was a *hidden* risk about which a guest in the home would not have reason to know and about which plaintiff did not know. *Id.* Defendant stated the following when asked "If you just looked down at the carpet [could you] see where the thread was pulled?":

> You would have to look at it, yeah. Because you have to understand, it's a – it's a gray carpet and to me I would see them because I knew they were there, I mean for somebody like, you know, you to walk in my house, *I don't think you would look at my carpet and see if there were any thread pulls*, so I mean – I don't know, to me I see them, so I don't know. [Emphasis added.]

Also, plaintiff testified that she noticed nothing wrong with the carpet before her fall. This evidence clearly created a question of fact regarding whether the risk of harm posed by the carpet loop was a *hidden* risk about which plaintiff had no reason to know and about which she in fact did not know.

In sum, the available evidence in this case indicated the existence of questions of fact regarding whether the carpet loop at issue represented an unreasonable risk of harm about which defendant had a duty to warn plaintiff. *Id*.

/s/ Jane E. Markey
/s/ Patrick M. Meter

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WILDER, J, *dissenting.*

I respectfully dissent. As noted by the Supreme Court on remand to this Court, plaintiff is a social guest and therefore "assumes the ordinary risks that come with the premises." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2001). The evidence was that the carpeting in defendant's home was subject to snag as a result of the weekly in-home steam cleaning. As a social guest, plaintiff assumed the ordinary risks that are presented by carpet snags occasioned by steam cleaning.

The majority concludes, however, that the loose carpet thread was a hidden danger and posed an unreasonable risk because of its placement at the top of the stairs. I disagree. In *Komalski v St. Johns Lutheran Church*, 261 Mich App 56, 64-65; 680 NW2d 50 (2004), this Court, citing to the Restatement of Torts (2d), Section 342, p. 210, noted in part that "[a] possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, . . . the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger." The evidence here fails to establish that defendant should have realized that the particular carpet loop presented an unreasonable risk of danger, or that any existing danger would not be discovered or realized by the plaintiff.

As noted *supra*, the evidence was that there were carpet loops throughout the house. Although plaintiff may not have seen the carpet loop at the top of the stairs, it was there to be seen on careful inspection had plaintiff performed such an inspection. The evidence does not show that the location of the carpet loop was such that defendant should have expected that the carpet loop could not be discovered by his social guests. In addition, according to defendant, 15 - 20 people visited his home on most days, there were a number of people at the wedding gathering on the date of the accident involved in this case, and numerous people had gone up and down the stairs before plaintiff fell. Plaintiff herself had been up and down those same stairs in

the past, and the evidence was that neither plaintiff nor anyone else had fallen on the stairs. Thus, while defendant was aware of the carpet loop, he testified that he did not believe that the carpet loop posed a danger.

On this record, I would conclude on remand that plaintiff has failed to show that defendant should have realized that the carpet pull in question presented an unreasonable risk of harm requiring a warning by defendant to his guests. In the absence of any prior tripping incidents, defendant's belief that the carpet loop did not pose a danger was objectively well-reasoned.

I would affirm.

/s/ Kurtis T. Wilder