STATE OF MICHIGAN

COURT OF APPEALS

MARY TODD, Plaintiff-Appellant,	UNPUBLISHED January 25, 2011
V	No. 295370 Kalamazoo Circuit Court
RENT-A-CENTER and MIDWEST, INC., Defendants-Appellees.	LC No. 2009-000150-NO

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals by right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff fell down the steps leading to the exit of a store leased by defendant Rent-a-Center and owned by defendant Midwest, Inc. Plaintiff was a business invitee at the time. The steps lacked a handrail. Plaintiff argues that the International Building Code, adopted by reference in MCL 125.1504(2), requires a handrail, so defendants had a duty to provide one. Plaintiff concludes that defendants' violation of a statutory duty precludes operation of the "open and obvious" doctrine, thereby not precluding a finding of negligence by defendants. The trial court disagreed, finding that controlling case law held that a violation of an ordinance did not, by itself, impose a legal duty. The trial court then found that the condition of the steps was open and obvious and that it lacked any special aspects, so it granted summary disposition to defendants.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation is also a question of law that we consider de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). "Whether a defendant owes a plaintiff a duty of care is a question of law for the court." *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001).

Initially, we note that whether the condition actually *was* open and obvious, or whether plaintiff's supposed familiarity with the steps has any relevance, are not before this Court. At issue in this appeal is only the narrow legal question of whether defendants owed plaintiff a duty of care, even if the condition of the steps is open and obvious.

Historically, it has been "elementary law in this State that violation of a statute is evidence of negligence *per se*." *Hardaway v Consolidated Paper Co*, 366 Mich 190, 196; 114 NW2d 236 (1962). Indeed, violation of a duty imposed by statute *is* negligence per se. *Douglas v Edgewater Park Co*, 369 Mich 320, 328; 119 NW2d 567 (1963). In contrast, violation of an ordinance or an administrative rule or regulation is considered evidence of negligence, but not negligence per se. *Id*.; *Rotter v Detroit United R*, 205 Mich 212, 231; 171 NW 514 (1919). However, although violation of a statute is negligence per se, it does not automatically establish liability. *Holmes v Merson*, 285 Mich 136, 140; 280 NW 139 (1938). It remains a question of fact whether the violation of the statute had a causal connection to the claimed injury. *Vaas v Schrotenboer*, 329 Mich 642, 650; 46 NW2d 416 (1951). Furthermore, violation of a statute only constitutes violation of a duty to a plaintiff under limited circumstances, such as when the statute was intended to protect a particular class of persons to which the plaintiff belonged or to protect against the particular kind of harm that occurred. *Longstreth v Gensel*, 423 Mich 675, 692-693; 377 NW2d 804 (1985).

This Court has recently explained that merely violating a construction code might be evidence of common-law negligence, but the open and obvious doctrine still applies; in contrast, violation of a *statutory* duty overrides the open and obvious doctrine. *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 720-721; 737 NW2d 179 (2007). In that case, this Court held that the defendants' alleged breach of a provision of the Michigan Occupational Safety and Health Act (MIOSHA) was not a violation of a statutory duty *to the plaintiff*, an invitee of the defendants, because the statutory duties at issue were owed between employers and employees. *Id*. at 721. This is consistent with historical precedent.

Plaintiff asserts that defendants violated a statutory duty imposed by the Single State Construction Code Act (SSCCA), MCL 125.1501 *et seq*, which adopts by reference the International Building Code at MCL 125.1504(2). In relevant part, MCL 125.1504 also provides:

> (3) The code shall be designed to effectuate the general purposes of this act and the following objectives and standards:
>
> * * *
>
> (c) To permit to the fullest extent feasible the use of modern technical methods, devices, and improvements, including premanufactured units, consistent with reasonable requirements for the health, safety, and welfare of the occupants and users of buildings and structures.
>
> * * *
>
> (e) To insure adequate maintenance of buildings and structures throughout this state and to adequately protect the health, safety, and welfare of the people.

The "general purposes" of the SSCCA are:

> to create a construction code commission and prescribe its functions; to authorize the director to promulgate rules with recommendations from each affected board relating to the construction, alteration, demolition, occupancy, and

> use of buildings and structures; to prescribe energy conservation standards for the construction of certain buildings; to provide for statewide approval of premanufactured units; to provide for the testing of new devices, materials, and techniques for the construction of buildings and structures; to define the classes of buildings and structures affected by the act; to provide for administration and enforcement of the act; to create a state construction code fund; to prohibit certain conduct; to establish penalties, remedies, and sanctions for violations of the act; to repeal acts and parts of acts; and to provide an appropriation.

This Court has held in dicta that the purpose of the SSCCA "is not to protect the public against harm . . . but merely to establish the authority . . . to 'prepare and promulgate' a state construction code consistent with, and protective of, the 'health, safety, and welfare of the occupants and users of buildings and structures.'" *Rakowski v Sarb*, 269 Mich App 619, 628 n 4; 713 NW2d 787 (2006). This is what the trial court relied on in granting summary disposition.

We find the *Rakowski* Court's reading of the SSCCA somewhat narrow. It defies sense to conclude that "occupants and users of buildings and structures" are not among the class of persons intended to be protected by the SSCCA, and it explicitly states that "protect[ing] the health, safety, and welfare of the people" is an objective. Furthermore, the SSCCA provides that it is a misdemeanor for "a person or corporation" to "[k]nowingly violate[] this act or the code or a rule for the enforcement of this act or code." MCL 125.1523(1)(a). We therefore disagree with *Rakowski* to the extent it holds that the SSCCA is not intended, at least in part, to protect the public against harm.

However, we are ultimately persuaded that *Rakowski* reached the correct conclusion. MCL 125.1504(2) adopts a variety of codes, including the International Building Code, "with amendments, additions, or deletions as the director determines appropriate." Therefore, there is no guarantee that the SSCCA actually adopts the specific provision within the International Building Code that governs handrails. The SSCCA's references to "the code" mean the *state* construction code, in its final codified form with amendments, additions, or deletions. See MCL 125.1502a(j). Finally, the SSCCA imposes a duty to promulgate a state construction code, but it does not comprehensively dictate all of the contents thereof. The state construction code is therefore ultimately "issued under statutory authority" rather than being a statute itself. See *Douglas*, *supra*, 369 Mich at 328. We cannot conclude that the SSCCA imposes a specific duty upon defendants to install handrails.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause