

STATE OF MICHIGAN
COURT OF APPEALS

VENUS NICHOLS,

Plaintiff-Appellant,

v

FAMILY DOLLAR STORES OF MICHIGAN,
INC., and MAD DOG PUPPY INVESTMENTS,
L.L.C.,

Defendants-Appellees.

UNPUBLISHED

March 15, 2011

No. 297238

Muskegon Circuit Court

LC No. 09-046663-NO

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Plaintiff Venus Nichols slipped and fell while entering a store owned by defendant Family Dollar Stores of Michigan, located on premises owned and maintained by defendant Mad Dog Puppy Investments, L.L.C. The circuit court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), finding the dangerous condition of the premises open and obvious as a matter of law. We affirm.

Nichols readily concedes that on the day of her fall, snow and slush covered the store's parking lot and the entrance walkway. At Nichols's deposition, she recalled that "[i]t was a bad morning, very wet, snow, ice." Nichols remembered that as she attempted to open the store's door, strong winds combined with the snow and slush carpeting the ground made the door feel "very heavy." As Nichols pulled the door open to step inside the store, she fell. When Nichols landed on the ground, her head and shoulders were inside the store, while from the waist down her body remained outside. Nichols attributed her fall to the "[i]ce and the slush," explaining "You know, it was slippery so . . . when I went to walk in, that's when I fell." Nichols added that ice and slush covered the floor just inside the store door, and that she did not notice the interior floor condition until after she fell.

Nichols's first amended complaint averred that defendants negligently failed to maintain the store's entryway in reasonably safe condition. Defendants sought summary disposition under MCR 2.116(C)(10), asserting that the snowy, slushy entryway was an open and obvious condition. Nichols countered that a combination of factors had caused her fall, including the significant force necessary to open the heavy door, the snow and slush, and a slight downward slope in the sidewalk at the store entryway. According to Nichols, this confluence of conditions

created a “significant risk of injury to persons attempting to enter Defendant’s [sic] store.” The circuit court granted summary disposition to defendants, reasoning that “the condition of the premises at the time of the plaintiff’s accident was open and obvious.”

Nichols now challenges the circuit court’s reliance on the open and obvious doctrine in granting defendants summary disposition. We review de novo a circuit court’s summary disposition ruling. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 592; 708 NW2d 749 (2005). A motion brought under MCR 2.116(C)(10) “tests the factual support of a plaintiff’s claim.” *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). “In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, 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*, 263 Mich App at 621. “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West*, 469 Mich at 183.

A premises owner or possessor owes invitees a duty to take reasonable care to protect against unreasonable risks of harm caused by dangerous conditions on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, a premises owner need not warn invitees of an open and obvious danger unless special aspects of the condition make the risk unreasonably dangerous. *Id.* at 516-517. The standard for determining whether a particular condition qualifies as open and obvious “is whether ‘an average user with ordinary intelligence (would) have been able to discover the danger and the risk presented upon casual inspection.’” *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 478; 760 NW2d 287 (2008), quoting *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

Nichols does not contest the open and obvious nature of the snow and slush outside the store, but suggests that “the totality of the circumstances resulting in her fall was neither open nor obvious to a casual inspector.” But the record un rebuttably establishes that the factors cited by Nichols as causative of her fall were all readily observable on the day of her accident. That the door seemed heavy, the wind blew, and the sidewalk slightly sloped all amounted to open and obvious conditions. And any snow and slush on the floor just inside the door also would have appeared obvious to the casual observer; Nichols advances no argument to the contrary. In *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934, 935; 782 NW2d 201 (2010), the Supreme Court declared that “wintry conditions by their nature would ... alert[] an average user of ordinary intelligence to discover the danger upon casual inspection.” Given Nichols’s admission of her awareness that wintry conditions surrounded her as she entered defendants’ store, we discern no basis for disturbing the circuit court’s summary disposition ruling.

Nichols raises one further challenge to the circuit court’s summary disposition ruling. In Nichols’s view, the “slant or slope of the walkway outside the door, as well as the significant weight or force required for patrons to open the door” constitute “special aspects” of the premises, giving rise to a question of fact concerning defendants’ negligence. A danger may present an unreasonable risk of harm despite its open and obvious character if a special aspect of

the premises creates an unavoidable danger or an unreasonably high risk of severe injury. *Lugo*, 464 Mich at 516-518. “[O]nly 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. The Court in *Lugo* offered the following examples of conditions with inherent special aspects: (1) an unguarded 30-foot-deep pit in the center of a parking lot, a condition presenting “a substantial risk of death or severe injury to one who fell in the pit,” and (2) standing water at the only exit of a commercial building, an effectively unavoidable condition because no alternative route exists. *Id.* at 518. A slightly sloping sidewalk and a heavy entrance door neither embody inherent dangers nor create an especially high likelihood of injury. We conclude that the circuit court properly granted defendants summary disposition of Nichols’s premises liability claim.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ William C. Whitbeck
/s/ Donald S. Owens