STATE OF MICHIGAN

COURT OF APPEALS

DEBRA ACEVES and ALFONSO ACEVES,

Plaintiffs-Appellants,

v

WESTERS FAMILY VINEYARD AND WINERY LLC and BLACK BARN VINEYARD AND WINERY LLC,

Defendants-Appellees.

UNPUBLISHED
December 23, 2025
12:16 PM

No. 372956
Jackson Circuit Court
LC No. 23-002452-NO

Before: K. F. KELLY, P.J., and MARIANI and ACKERMAN, JJ.

PER CURIAM.

In this premises-liability action, plaintiffs, Debra Aceves and Alfonso Aceves, appeal by right the trial court's order granting summary disposition in favor of defendants, Westers Family Vineyard and Winery LLC and Black Barn Vineyard and Winery LLC.[1] Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of a slip-and-fall incident where plaintiff fell down a flight of stairs. Defendants operate a barn wedding venue owned by Wendy Westers and Lloyd Westers. Lloyd, a licensed builder, constructed the barn in 2016. The venue has an outdoor area with an upper deck and lower deck that are connected by a wooden set of stairs. Each stair tread consists of two wooden boards with a gap in the middle—approximately ⅛-inch to ¼-inch wide—to allow for drainage.

[1] Plaintiffs are a married couple. Alfonso seeks loss-of-consortium damages, which are contingent upon Debra's recovery of damages. See *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 279; 705 NW2d 136 (2005) (noting that a loss-of-consortium claim is derivative), aff'd 480 Mich 75 (2008). For ease of reference, this opinion uses the singular term "plaintiff" to refer to Debra.

On June 4, 2022, plaintiff attended a wedding hosted on defendants' premises. While attempting to make a phone call, plaintiff began to descend the stairs from the venue's upper deck to the lower deck. On the first or second step, plaintiff felt her shoe get stuck, and subsequently fell down the staircase. She sustained severe injuries as a result of the fall. At the time, plaintiff was wearing high-heeled shoes with a ½-inch diameter at the base of the heel.

In September 2023, plaintiff sued defendants, asserting claims for ordinary negligence and premises liability. Defendants eventually moved for summary disposition under MCR 2.116(C)(8) and (10). In her response, plaintiff conceded that her claim for ordinary negligence was subject to dismissal under MCR 2.116(C)(8), but maintained that genuine issues of material fact precluded summary disposition of her premises-liability claim. Following a hearing, the trial court granted defendants' motion for summary disposition, reasoning that plaintiff failed to establish a genuine issue of material fact regarding causation and whether the stairs posed an unreasonable risk of harm. This appeal ensued.

II. STANDARDS OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Chisholm v State Police*, 347 Mich App 646, 651-652; 16 NW3d 563 (2023). While defendants moved for summary disposition under MCR 2.116(C)(8) and (10), on appeal, plaintiff contests only the trial court's grant of summary disposition under MCR 2.116(C)(10). "A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the claim and is properly granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Chisholm*, 347 Mich App at 652. "A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds might disagree." *Id*. On review, this Court "consider[s] the documentary evidence in the light most favorable to the nonmovant." *Id*.

III. ANALYSIS

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition because she established a genuine issue of material fact regarding causation and whether defendants breached their duty of care to her as an invitee. We conclude that the trial court properly granted defendants' motion for summary disposition because plaintiff failed to establish a genuine factual dispute regarding the element of breach.

"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 damages." *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013) (quotation marks and citation omitted). "The duty owed to a visitor by a landowner depends on whether the visitor was a trespasser, licensee, or invitee at the time of the injury." *Id*. Plaintiff, as a wedding guest at defendants' venue, was an invitee at the time she was injured. See *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 111; 1 NW3d 44 (2023) ("Generally speaking, invitee status is commonly afforded to persons entering upon the property of another for business purposes.") (quotation marks and citation omitted). As such, defendants owed plaintiff "a duty 'to exercise reasonable care to protect [her] from an unreasonable risk of harm caused by a dangerous condition of the land.' " *Id*. at 112, quoting *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

"If the plaintiff establishes that the land possessor owed plaintiff a duty, the next step in the inquiry is whether there was a breach of that duty." *Kandil-Elsayed*, 512 Mich at 148. The issue of breach concerns "whether defendants' conduct in the particular case is below the general standard of care . . . ." *Id*. at 112 (quotation marks and citations omitted). Whether a premises possessor breached its duty is ordinarily a question of fact for the jury, but if "the evidence presented to a court concerning breach generates no questions of fact, the issue can be decided by the judge as a matter of law." *Id*. at 112 n 2. Accordingly, "if there are no genuine issues of material fact" regarding the element of breach, "a court may properly grant summary disposition under MCR 2.116(C)(10)." *Id*. at 148 n 28.

As noted, the element of breach was one basis on which defendants moved for summary disposition of plaintiff's claim. Under the burden-shifting framework of MCR 2.116(C)(10),

> [T]he moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists . . . . If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996) (citations omitted).]

"[A] party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact." *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 723; 909 NW2d 890 (2017) (quotation marks and citation omitted); see also *Skinner v Square D Co*, 445 Mich 153, 174; 516 NW2d 475 (1994) ("We recognize that motions for summary judgment implicate considerations of the jury's role to decide questions of material fact. At the same time, however, litigants do not have any right to submit an evidentiary record to the jury that would allow the jury to do nothing more than guess.").

In their motion for summary disposition, defendants argued that plaintiff could not prove that the stairs were a "condition [that] posed an unreasonable risk of harm," and supported their claim with documentary evidence. Defendants attached photographs showing that the stairs were in good condition and deposition testimony from plaintiff acknowledging that the stairs "appeared to be safe and okay to go down[.]" Defendants also presented testimony from Wendy that the venue did not have any issues with the stairs over the course of approximately 135 weddings. In response, plaintiff argued that defendants breached their duty "by failing to appreciate the danger of a quarter-inch gap in stair 'tread' boards . . . at venue that hosts up to 50 weddings per year that would have countless guests wearing high heel shoes." The only evidence that plaintiff presented in support of this assertion was testimony from Lloyd that the size of the gap between the boards was "an eighth inch to a quarter inch" and testimony from Wendy estimating the number of weddings that defendants hosted each year.

Plaintiff asserts that the stairs posed an unreasonable risk of harm because there was a gap between the wooden boards of each stair tread, which purportedly caught her heel and caused her to fall. Even taking those factual assertions as true, however, plaintiff presented no evidence from which a factfinder could conclude that the gap between the boards posed an unreasonable risk of harm, such that defendants could be held liable for failing to protect her from it. As our Supreme Court has recognized, "ordinary steps" do not pose an unreasonable risk of harm simply because they are not " 'foolproof,' " *Bertrand*,

449 Mich at 616-617,[2] and plaintiff wholly failed to substantiate the notion that the steps at issue in this case were anything but ordinary or that the risk they posed was unreasonable. For example, plaintiff could have presented evidence that the gap between the boards was designed abnormally or defectively, or that it would be standard practice to take protective measures with respect to the gap in light of defendants' operation as a wedding venue. The trial court even attempted to elicit evidence on this point, asking whether plaintiff had "a construction standard or an expert to say that th[e] design is unsafe," to which plaintiff responded, "[n]o." While it might conceivably be that defendants' steps fell below the standard of care applicable to defendants as a wedding venue, plaintiff offered no factual basis upon which a jury could ground any such standard or conclusion. All that plaintiff's evidence, taken in the light most favorable to her, showed was that she caught a heel on the gap between the boards while walking down the stairs; the jury cannot simply be left to speculate about whether that accident involved a breach of defendants' standard of care, and there is no evidence from which a factfinder could infer that the mere presence of the gap posed an unreasonable risk of harm. See *Skinner*, 445 Mich at 174; *Meisner Law Group*, 321 Mich App at 723; see also *Bertrand*, 449 Mich at 616-617; *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977) ("The mere occurrence of plaintiff's fall is not enough to raise an inference of negligence on the part of defendant.").

While we acknowledge "[t]he default rule that . . . breach is settled by the jury," that rule remains subject to the standards governing summary disposition, and "where the evidence presented to a court concerning breach generates no questions of fact, the issue can be decided by the judge as a matter of law." *Kandil-Elsayed*, 512 Mich at 112 n 2. Given the dearth of evidence to support plaintiff's claim of breach, the trial court did not err by granting summary disposition in this case.[3]

Affirmed. Having prevailed on appeal, defendants may tax costs. MCR 7.219(A).

/s/ Kirsten Frank Kelly
/s/ Philip P. Mariani

[2] As our Supreme Court explained in *Kandil-Elsayed*, 512 Mich at 123-124, *Bertrand*'s discussion of this point "mudd[ied] the waters between duty and breach" by suggesting that the open and obvious nature of a dangerous condition may be, at least in part, a question of duty. *Kandil-Elsayed* clarified that such considerations go not to duty, but to breach and comparative fault. See *id*. at 144. In so doing, however, our Supreme Court did not otherwise purport to reject or disrupt the substantive proposition from *Bertrand* cited above or suggest that it cannot properly inform whether there is a genuine factual dispute as to breach.

[3] Having determined that the trial court's grant of summary disposition was proper based on plaintiff's failure to establish a genuine factual dispute regarding the element of breach, we need not address plaintiff's causation arguments. However, assuming there were sufficient evidence as to breach, we would conclude that the evidence presented does raise questions of material fact as to causation.

STATE OF MICHIGAN

COURT OF APPEALS

DEBRA ACEVES and ALFONSO ACEVES,

Plaintiffs-Appellants,

v

WESTERS FAMILY VINEYARD AND WINERY LLC and BLACK BARN VINEYARD AND WINERY LLC,

Defendants-Appellees.

UNPUBLISHED
December 23, 2025
12:16 PM

No. 372956
Jackson Circuit Court
LC No. 23-002452-NO

Before: K. F. KELLY, P.J., and MARIANI and ACKERMAN, JJ.

ACKERMAN, J. (*dissenting*).

In this premises liability case, the majority concludes that plaintiff failed to create a genuine issue of material fact as to breach because she did not provide sufficient evidence that the gap in the stair tread that she tripped on posed an unreasonable risk of harm. I respectfully disagree. Because plaintiff presented evidence from which a reasonable juror could conclude that defendants exposed her to an unreasonable risk of harm, summary disposition was improper, and I would reverse.

As the majority explains, plaintiff Debra Aceves attended a wedding at a barn venue owned and operated by defendants Westers Family Vineyard and Black Barn Vineyard. The venue has two levels connected by wooden stairs, and the tread of each step consists of two boards separated by a gap of approximately ⅛ to ¼ of an inch. Plaintiff was wearing high-heeled shoes when she began descending the stairs and fell, sustaining serious injuries. She alleged that her heel became caught in the gap in one of the stair treads and that the condition posed an unreasonable risk of harm to invitees, particularly those wearing high-heeled shoes. The trial court granted summary disposition to defendants, and the majority affirms, concluding that plaintiff cannot establish that defendants breached a duty owed to her. I respectfully disagree.

It is well established that "[a]ll negligence actions, including those based on premises liability, require a plaintiff to prove four essential elements: duty, breach, causation, and harm." *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 111; 1 NW3d 44 (2023). In premises liability cases

involving invitees, "[t]he possessor of land has a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land." *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). Applying these principles at the summary disposition stage requires careful attention to the proper division of responsibility between the court and the jury:

> While the court decides questions of duty, general standard of care and proximate cause, the jury decides whether there is cause in fact and the specific standard of care: whether defendants' conduct in the particular case is below the general standard of care, including—unless the court is of the opinion that all reasonable persons would agree or there is an overriding legislatively or judicially declared public policy—whether in the particular case the risk of harm created by the defendants' conduct is or is not reasonable. [*Moning v Alfono*, 400 Mich 425, 438; 254 NW2d 759 (1977) (footnote omitted).]

Here, there is no dispute over whether defendants owed plaintiff a duty (they did) or over whether plaintiff suffered harm (she did). Moreover, the majority and I agree that plaintiff can show there is a genuine issue of material fact as to causation. The sole question is whether plaintiff has a jury-submissible issue as to breach.

Under *Moning*, a breach occurs when "defendants' conduct in the particular case is below the general standard of care." *Id*. The general standard of care here is straightforward: Defendants were required "to exercise reasonable care to protect [plaintiff] from an unreasonable risk of harm caused by a dangerous condition of the land." *Williams*, 429 Mich at 499. This issue must be submitted to the jury unless "all reasonable persons would agree or there is an overriding legislatively or judicially declared public policy." *Moning*, 400 Mich at 438. There is no assertion that any overriding public policy controls this situation, so the question is whether all reasonable persons would agree. I am not convinced that all reasonable persons would agree and therefore conclude that the issue should be submitted to a jury.

Defendants operated a wedding venue and could reasonably expect that many invitees would wear high-heeled shoes. Stairs with gaps in their treads pose a particular risk to such footwear. Plaintiff testified that she fell after her shoe got stuck while descending the stairs, and her shoe was damaged in a manner consistent with that account. From this evidence, a reasonable juror could conclude that "defendants' conduct . . . [was] below the general standard of care," such that "the risk of harm created by the defendants' conduct . . . [was] not reasonable." *Id*. That is sufficient to survive summary disposition.

The fundamental locus of disagreement between me and the majority is whether plaintiff presented evidence from which a reasonable jury could conclude that the risk was an unreasonable one. The majority claims that "plaintiff presented no evidence from which a factfinder could conclude that the gap between the boards posed an unreasonable risk of harm." In doing so, it relies on *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), which it reads to recognize that " 'ordinary steps' do not pose an unreasonable risk of harm simply because they are not 'foolproof.' " But *Bertrand* is no longer reliable authority for that proposition. When it was decided, the Supreme Court treated the open and obvious nature of a condition as part of the duty inquiry. The Court stated that "the overriding public policy of encouraging people to take

reasonable care for their own safety precludes *imposing a duty* on the possessor of land to make ordinary steps 'foolproof,' " but "where there is something unusual about the steps, . . . the *duty* of the possessor of land to exercise reasonable care remains." *Id*. at 616-617 (emphasis added). Although *Bertrand* elsewhere spoke in terms of breach and the unreasonableness of the risk of harm, see, e.g., *id*. at 614, that doctrinal ambiguity is precisely why the Supreme Court later observed that *Bertrand* "mudd[ied] the waters between duty and breach." *Kandil-Elsayed*, 512 Mich at 123. Reliance on *Bertrand* therefore leads the majority astray.

After *Kandil-Elsayed*, categorical distinctions such as whether steps are "ordinary" or "unusual" no longer control the analysis in a system governed by comparative fault. The governing principle is simply "the traditional duty owed to invitees: the 'duty to exercise reasonable care to protect [them] from an unreasonable risk of harm caused by a dangerous condition of the land.' " *Id*. at 143, quoting *Williams*, 429 Mich at 499. Categorical distinctions about the condition of the land do not alter this duty, and once a duty exists, plaintiff need only show that a reasonable juror could find that it was breached. "The trier of fact decides whether reasonable precautions have been taken and thereby establishes the specific standard of care." *Moning*, 400 Mich at 448 n 27.

I therefore disagree with the majority's suggestion that plaintiff was required to "present[] evidence that the gap between the boards was designed abnormally or defectively, or that it would be standard practice to take protective measures with respect to the gap in light of defendants' operation as a wedding venue." A court may remove the issue of breach from the jury only if no reasonable juror could conclude that defendants acted unreasonably or that defendants were more at fault than plaintiff. Plaintiff clears that threshold. Contrary to the majority's assertion that "there is no evidence from which a factfinder could infer that the mere presence of a gap poses an unreasonable risk of harm," the gaps here were located in stair treads at a commercial wedding venue operated by defendants. A reasonable juror could conclude that stairs containing gaps of sufficient size to catch a high-heeled shoe posed an unreasonable risk of harm under those circumstances—particularly given the foreseeable use of the stairs by guests wearing such footwear and the heightened danger posed by a fall on stairs due to the change in elevation.

I also disagree that there is any risk of speculation as to this element of plaintiff's negligence action. Under *Moning*, the court instructs the jury as to the general standard of care, and the jury decides whether the defendant's conduct fell below it. That is a value judgment.

> [A] major role for juries in negligence cases is to evaluate the facts to determine whether the defendant was negligent, whether his conduct was a legal cause of the plaintiff's harm, and the amount of damages. The value judgments entailed are quite different from the determination of historical facts. If the plaintiff claims injury resulting when, on a dark night, she bumped into a face-level box attached to a utility pole, the jury must first determine whether defendant attached such a box to the pole, how high it was, and whether the plaintiff in fact bumped into it. Those are questions of historical fact. Once those historical facts are determined, the jury must go further and decide whether the defendant's conduct amounted to the negligent creation of an unreasonable risk. *For this there is no conclusive legal guide except the standard of the reasonable and prudent person. It is the jury's job to make a judgment whether the defendant's conduct met that standard.* [1 Dobbs,

> Hayden & Bublick, Torts (2d ed), § 163, p 525 (emphasis added; footnotes omitted).]

While courts must guard against inviting juries to speculate as to historical facts, I am aware of no authority—and the majority cites none[1]—suggesting that "speculation" is a concern when juries make the normative judgment as to whether a risk was unreasonable. The only question is whether a reasonable juror could conclude that the dangerous condition posed an unreasonable risk of harm. Although "[t]he mere occurrence of plaintiff's fall is not enough to raise an inference of negligence on the part of defendant," *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977), the only inference plaintiff asks the jury to draw is whether her shoe heel was caught in the stair tread, rather than that she tripped for some other reason.

To say that a reasonable juror *could* find breach is not to say that they *must*. A jury might well find that plaintiff bore greater responsibility for her injury by choosing to navigate rustic wooden stairs in high-heeled shoes or by failing to observe the condition of the stair treads. That might even be my own assessment were I sitting as a juror. But that is not the role of this Court at summary disposition. That judgment belongs to a jury of Jackson County residents, because "the jury's judgment of what is reasonable under the circumstances of a particular case is more likely than the judicial judgment to represent the community's judgment of how reasonable persons would conduct themselves." *Moning*, 400 Mich at 436.

Because plaintiff presented evidence from which reasonable minds could differ on whether defendants breached their duty, summary disposition was improper. I would reverse and remand, and I respectfully dissent.

/s/ Matthew S. Ackerman

[1] The cases cited by the majority involve speculation as to historical facts, not normative judgments about the reasonableness of a risk. In *Skinner v Square D Co*, 445 Mich 153, 173; 516 NW2d 475 (1994), the "[p]laintiffs' expert testimony did not sufficiently establish causation." In *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977), the "plaintiff's husband did not see [her fall]," and while he submitted an affidavit suggesting that she tripped on a metal strip, "[o]nly conjecture" supported that conclusion. And in *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 720; 909 NW2d 890 (2017), the "plaintiff . . . could not create a question of fact, that its claim . . . could exceed the $25,000 jurisdictional limit of the circuit court," i.e., the historical fact of damages.