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STATE OF MICHIGAN

COURT OF APPEALS

MARK PEGGINS,

Plaintiff-Appellant,

v

CEDAR CREEK HOSPITAL and CEDAR CREEK HOSPITAL OF MICHIGAN,

Defendants-Appellees.

UNPUBLISHED
November 13, 2026
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No. 375913
Clinton Circuit Court
LC No. 23-012359-NI

Before: M. J. KELLY, P.J., and RIORDAN and RICK, JJ.

PER CURIAM.

Plaintiff, Mark Peggins, appeals as of right the trial court order granting summary disposition to defendants Cedar Creek Hospital and Cedar Creek Hospital of Michigan under MCR 2.116(C)(10). Because questions of material fact remain as to whether defendants breached their duty, summary disposition was improperly granted as to Peggins' premises-liability claim. Further, the trial court erred by summarily dismissing Peggins' ordinary negligence claim because defendants did not present any legal argument or factual support below for their request to dismiss that claim. Accordingly, we reverse and remand for further proceedings.

I. BASIC FACTS

Peggins was admitted as a patient at Cedar Creek Hospital on June 18, 2023. Five days later, on June 23, 2023, he decided to take his second shower at the hospital. Peggins received his "soap and towels and toiletries" from staff and then entered his room's bathroom.

The bathroom had a standup shower with a soap dispenser on the wall. The shower area was separated from the rest of the bathroom by a raised "lip" along the floor. The opening to the shower was directly across from the toilet. Two "grab bars" were installed by the toilet, one

vertically and one horizontally. A piece of flat metal was welded to the inside of each bar.[1] No "grab bars" were installed in the shower area. Finally, there was a "flimsy" shower curtain between the shower area and the remainder of the bathroom.

Peggins testified that he was not in a "rush" to shower. He entered the shower area, turned on the water, and then reached for the soap, slipped, and fell.[2] Peggins testified that "all" of his body was "inside" the shower area when he slipped, and he stressed that he was not in the process of "stepping out" into the bathroom area. Rather, he slipped in the shower area and then fell into the bathroom area. He further elaborated that when he moved his leg, his right foot slipped out. At the time, he believed that he was facing the shower head and that the "grab bars" in the bathroom area were behind him. As he fell out of the shower, his legs did the "Russian splits,"[3] his ankle twisted, and he landed on his right hip. He stated that he reached for one of the grab bars, but was unable to get a grip because of the flat metal welded on the inside of the bar. Peggins' back hit the toilet and then he then fell backwards and struck his head.

Peggins further testified that he fell because the "shower floor was really slippery." He stated that there were no "slippy strips" in the shower area and that there was no "grippiness" inside the shower at all. He explained that he had not "soaped" his body before falling and that there was no soap on the floor.[4]

According to Peggins, no one checked on him until after he screamed for help. He estimated that it was approximately ten minutes before any help came. He believed that it was another patient who alerted the hospital staff that he had fallen. Peggins stated that the "nurse" that came in was upset about the "water mess" in the bathroom and that the "nurse"[5] got towels to clean it up and "pretty much left me." As a result, he had to crawl from the bathroom to his bed and pull himself up. He stated that he told the nurse that he needed help, but that he had to wait approximately one hour before an ambulance came. This testimony was the basis for his ordinary negligence claim.

Danial Franklin-Cromwell, a registered nurse, was on duty when Peggins fell. He testified that someone—probably a "tech"—had notified him that Peggins had fallen. He recalled asking a "tech" to get Peggins vitals and that when he later entered Peggins's room he found Peggins sitting on the edge of the bed. He described Peggins as being "extraordinarily angry." He asked Peggins if he could move and how he had gotten onto the bed. In response, Peggins called him "stupid"

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[1] Defendants presented evidence suggesting that the bars were designed to prevent patients from harming themselves, but that they could still be used by patients to "stabilize" themselves.

[2] Peggins first testified that he was reaching for the soap that was "on the little bar," but after seeing a photograph of the shower, he indicated that he had not needed to reach for anything because it was in the shower's soap dispenser.

[3] Peggins clarified that his legs went "straight out" on either side of his body.

[4] Peggins thought that there might be residue from when the shower was cleaned, but admitted that he did not smell any cleaning chemicals and that he had "no evidence" to support his belief.

[5] Peggins thought the nurse was named "Frank," but he could not quite recall.

and demanded that he get "someone who knew what they were doing." Franklin-Cromwell left the room and asked someone named "Geoff" to do the required post-fall assessment.

Franklin-Cromwell further testified that he inspected the bathroom after Peggins' fall, but that it looked the "same every day." He stated that before Peggins' fall, "everybody realized that there was a potential" for a slip and fall "in that hospital." He added that "not many" of the falls at the hospital took place "in the shower." Franklin-Cromwell testified that it was "not uncommon" for water to escape the shower area and end up on the bathroom floor outside the shower. As a result, patients were given two towels and advised to lay one towel outside of the shower for when they exited the shower.

Additionally, Franklin-Cromwell testified that, in the four-and-a-half years that he worked at the hospital, there were discussions of the "water" in the "shower stalls." He described conversations with "maintenance" to address the "continuing issue." To remedy the issue, the hospital had closed a couple of rooms and were "doing something with the angle of the drainage." They also would "put drain cleaner and that sort of thing in the drains."[6] Finally, he testified that the shower area did not have a "grippy surface." He explained that at the time that Peggins' fell the shower floor was "kind of pebbly," but not "in a way that" that meant it was "not slippery."

In November 2023, Peggins filed a complaint against defendants alleging that "the floors failed to have non-slip material" and that the "shower bars for stability had metal plates welded over them [that] rendered the bars useless." He also alleged ordinary negligence arising from the delayed response by defendants' staff in providing him with assistance after his fall.

Following discovery, defendants moved for summary disposition, asserting that because Peggins slipped and fell on "his own water in a shower," the hazard was "clearly open and obvious" and there was "no evidence" that they breached any duty owed to Peggins. In a supporting brief, they acknowledged that Peggins was an invitee and that, as such, they owed him a duty to exercise reasonable care to protect him "from an unreasonable risk of harm caused by a dangerous condition" on their premises. However, they directed the court to evidence that Peggins slipped in the shower area, that the shower area had a "slip resistant surface," and that they had no actual or constructive notice of any hazardous conditions in the shower area. They contended that dismissal of Peggins' complaint was warranted based upon the lack of evidence of a hazardous condition or, alternatively, their lack of actual or constructive notice that there was a hazardous condition in the shower area. Defendants did not raise any challenge to Peggins' claim of ordinary negligence, but they did request that the entire complaint be dismissed.

In response, Peggins argued that defendants had actual notice of the hazardous condition posed by the slipperiness of the shower, the lack of "grab bars" in the shower area, and the defectiveness of the grab bars by the toilet. He also provided copies of building plans dated March 24, 2023, which revealed planned renovations calling for bars to be installed in the showers. Peggins also submitted an affidavit from a proposed expert, who opined that the shower/bath area did not comply with the 2023 plans because the existing bars had welded material that made it

[6] Franklin-Cromwell was unaware of any problems with the drain in Peggins' shower at the time that Peggins fell.

difficult to grab and because there were no "grab bars" in the shower area. Peggins' expert also opined that the existing bars did not have the "peened finish" that was called for in the 2023 plans.

Following oral argument, the trial court entered a written opinion and order summarily dismissing Peggins' complaint. The trial court's opinion addressed the premises-liability claim but did not address the ordinary negligence claim. This appeal follows.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Peggins argues that the trial court erred by granting summary disposition under MCR 2.116(C)(10). We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering*, *Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). Motions under MCR 2.116(C)(10) test "the factual sufficiency of a complaint." *American Civil Liberties Union of Mich v Calhoun Co Sherrif's Office*, 509 Mich 1, 9; 983 NW2d 300 (2022). The evidence submitted by the parties—including affidavits, pleadings, and depositions—in the light most favorable to the nonmoving party. *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 109; 1 NW3d 44 (2023). The moving party is only entitled to "judgment as a matter of law" when "the proffered evidence fails to establish a genuine issue regarding any material fact." *Id*. (quotation marks and citation omitted). A genuine issue of material fact exists "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Id*.

B. ANALYSIS

1. PREMISES LIABILITY

Peggins first asserts that his premises-liability claim was improperly dismissed. In order to establish a premises-liability claim, the plaintiff must prove four elements: duty, breach, causation, and damages. *Quinto v Woodward Detroit CVS, LLC*, 305 Mich App 73, 75, 850 N.W.2d 642 (2014). Whether a "duty" exists if a "threshold question of law" that is decided by the trial court before a case reaches a jury. *Kandil-Elsayed*, 512 Mich at 133. What duty is owed to a plaintiff depends upon the plaintiff's status as an invitee, licensee, or trespasser. *Id*. at 111-112.

Here, it is undisputed that Peggins was an invitee of defendants. See *id*. at 111 ("An invitee is a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make it safe for the invitee's reception.") (Quotation marks, citation, and alterations omitted). Invitees are "entitled to the highest level of protection under premises liability law." *Id*. at 112. As such, defendants owed Peggins a duty "to exercise reasonable care to protect [him] 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). The element of breach is met if the premises owner "knows or should have known of a dangerous condition and fails to protect invitees via repair, warning, or other appropriate mitigation of the danger under the given circumstances." *Albitus v Greektown Casino, LLC*, 339 Mich App 557, 563; 984 NW2d 511 (2021). That is, the plaintiff must show that the defendant had actual or constructive notice of the allegedly dangerous condition. *Id*.

Peggins testified that he slipped in the shower area because the shower floor was slippery, did not have "slippy strips," and was not "grippy." Similarly, Franklin-Cromwell testified that the shower area did not have a "grippy surface." Instead, he described it as "pebbly" but not in a way that meant it was "not slippery." To refute that evidence, defendants submitted a photograph purporting to show that the surface was slip-resistant. They also submitted a letter from their proposed expert, Nathan Lockard, opining that the shower area had a slip-resistant coating and had been properly installed.[7] Given the conflicting nature of Lockard's testimony when considered against the testimony from Peggins and Franklin-Cromwell, there is a disputed factual dispute as to whether the surface of the shower floor was or was not slip resistant.

Next, when viewed in the light most favorable to Peggins, there is also evidence that defendants had actual notice of the slipperiness of the floor in the shower area. Again, Franklin-Cromwell testified that there had been falls in the shower area, that the floor in the shower area did not have a "grippy surface," and that the "pebbly" texture did not make the floor slip-resistant. He also testified that there had been conversations with maintenance to address the "continuing issue" arising from "water" in the "shower stalls." Although he also testified—in detail—of an issue with water being transferred from the shower area to the bathroom area, that testimony did not negate his testimony regarding the ongoing issues in the *shower area*. Rather when viewed in the proper light, there is a material question of fact regarding whether defendants had actual notice of the slippery nature of the floor in the shower area given that one of their employees testified to its non-grippy nature and to the fact that others had fallen.

There is also a question of fact regarding the grab bars. Defendants had actual notice that there were no grab bars in the shower area and that the grab bars in the bathroom area had metal plates welded onto them ostensibly for patient safety. Peggins testified that, when he slipped, he was unable to grip the grab bars to stabilize himself because of the metal welded inside them. Moreover, he presented an affidavit from an expert who opined that the lack of grab bars in the shower area was a proximate cause of Peggins' fall. Although his opinion was based upon his review of 2023 architectural designs for the placement, installation, specified type, and suitability of "grab bars," it is undisputed that there were no grab bars in the shower. As such, viewed in the light most favorable to Peggins, it can be inferred that the absence of grab bars in the shower—regardless of whether they were or were not required by law or building codes—contributed to him falling after he slipped. Summary disposition is not, therefore, warranted based upon the fact that Peggins' expert considered 2023 architectural plans.

Because there are disputed questions of fact on both the existence of a dangerous condition in the shower area and on whether defendants had actual or constructive notice of that condition, summary disposition was not properly granted as to Peggins' premises-liability claim.

[7] Peggins challenged the admissibility of the letter in the trial court based upon the fact that it was unsigned. In response, defendants asserted that it had been "electronically signed." The trial court did not address the matter in its opinion and order. Regardless, on appeal, Peggins stated in a footnote that it is "not at issue on this appeal."

2. ORDINARY NEGLIGENCE CLAIM

Although inartfully worded, Peggins clearly brought a claim alleging that defendants' staff were negligent in providing him with assistance after he slipped and fell in the shower area. In its motion for summary disposition, defendants did not argue that summary disposition was warranted on that claim. Instead, their argument was limited to the premises-liability claim. The trial court, however, dismissed the entirety of Peggins' complaint. On appeal, Peggins argues that the court erred by doing so. In response, defendants argue that Peggins waived his challenge to dismissal of its ordinary negligence claim because he did not raise his argument in the trial court despite the fact that defendants asked the court to summarily dismiss the entirety of his complaint. We disagree.

A party moving for summary disposition under MCR 2.116(C)(10) must support the motion with enough detail that the opposing party is on notice of the need to respond. *Barnard Mfg*, 285 Mich App at 369; see also MCR 2.116(G)(4) (stating that the moving party must "specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact"). The motion must be supported "with affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted." *Barnard Mfg*, 285 Mich App at 369; MCR 2.116(G)(3)(b). Here, although defendants requested that the trial court dismiss Peggins' entire complaint, they provided nothing in support of their request for dismissal of the ordinary negligence claim and they provided no analysis suggesting that such a dismissal was warranted under the applicable law. As such, they did not place Peggins on notice of his need to respond, and so the burden never shifted to him to establish that a genuine issue of material fact existed. See *Quinto*, 451 Mich at 362.

Likewise, although the trial court summarily dismissed the entirety of Peggins' complaint, it engaged in no analysis of the merits of Peggins' ordinary negligence claim. Instead, its opinion and order was limited to discussing whether there is a question of fact precluding summary disposition of Peggins' premises-liability claim. Given that the trial court was not presented with any argument or evidentiary support to warrant the grant of summary disposition as to Peggins' ordinary negligence claim, and given that defendants' motion for summary disposition did "specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact," see MCR 2.116(G)(4), there is simply no basis upon which to affirm the trial court's grant of summary disposition as to Peggins' claim of ordinary negligence.

Reversed and remanded for further proceedings. Peggins may tax costs as the prevailing party. MCR 7.219(A). We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Michelle M. Rick

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RIORDAN, J. (*concurring*).

I concur in the result only.

/s/ Michael J. Riordan