STATE OF MICHIGAN

COURT OF APPEALS

RUTH WOODBURY,

Plaintiff-Appellant,

v

CHARLES I. BRUCKNER and ALICE BRUCKNER,

Defendants-Appellees.

UNPUBLISHED
December 1, 1998

No. 204411
Monroe Circuit Court
LC No. 95-003133 NO

Before: Griffin, P.J., and Gage and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We reverse and remand for further proceedings.

The trial court set forth the uncontroverted facts in its opinion:

> [Defendants] purchased the home from the former owner in 1989. Throughout Plaintiff's tenancy, the roof-top has remained in the same condition.
>
> Plaintiff has rented an apartment at the home since 1987. In that year, the former owner converted the house into apartments. As part of the process, the former owner removed an outdoor stairway which led to the second floor. In its place, the owner created a flat-roofed addition. This non-railed, flat roof-top was in place at the time Plaintiff began her tenancy.
>
> On February 7, 1994, Plaintiff decided to clean two throw rugs from the flat roof-top. Plaintiff fell from the roof while attempting to shake debris from the second rug. The fall caused Plaintiff's injuries.

On appeal, plaintiff contends that the trial court erred in granting summary disposition because a genuine issue of material fact exists regarding whether the risk of harm was unreasonable, despite it

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

being open and obvious. We agree. A trial court's grant of summary

disposition is reviewed by this Court de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). This Court reviews the record in the same manner as the trial court to determine if the movant is entitled to judgment as a matter of law. *Philips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995). Summary disposition is appropriate where "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

The elements of a negligence cause of action are that the defendant owed a duty to the plaintiff, the defendant breached that duty, the plaintiff suffered damages, and the breach was a proximate cause of the damages suffered. *Hughes v PMG Building, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). The duty defendants, as landlords, owed to plaintiff, as tenant, is that of a business invitee. *Petraszewsky v Keeth*, 201 Mich App 535, 540-541; 506 NW2d 890 (1993). Generally, a possessor of land does not owe a duty to protect his invitees "where conditions arise from which an unreasonable risk cannot be anticipated or of dangers that are so obvious and apparent that an invitee may be expected to discover them himself." *Riddle v McLouth Steel Products*, 440 Mich 85, 94; 485 NW2d 676 (1992). In this case, the parties agree that the second story roof-top porch did not have a guardrail and both defendants and plaintiff were aware of this condition. The danger of falling from the roof was open and obvious. However, even though the danger was open and obvious, defendants are not necessarily relieved of liability.

In *Bertrand v Alan Ford Inc*, 449 Mich 606; 537 NW2d 185 (1995), the Supreme Court clarified the duty owed by a landowner to an invitee where the dangerous condition is open and obvious, finding that, although a possessor of land may not have an obligation to warn invitees of an open and obvious danger, the landowner may still have a duty to protect invitees against unreasonably dangerous conditions. *Id.* at 610-611. The Court stated, "if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions. The issue then becomes the standard of care and is for the jury to decide." *Id.* at 611. See also, *Hughes, supra* at 10-11; *Hottmann v Hottmann*, 226 Mich App 171, 175-176; 572 NW2d 259 (1997).

In view of the absence of guardrails, the height of the roof-top porch, and the inherent dangerousness of the condition, we conclude that a genuine issue of fact exists as to whether the risk of plaintiff falling from the roof remained unreasonable. *Hottmann, supra* at 176. Accordingly, we hold that the trial court erred in granting defendants' motion for summary disposition. Because of our disposition, it is not necessary for us to address the other issues raised by plaintiff on appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage