

IN THE COURT OF APPEALS OF IOWA

No. 7-404 / 06-1198

Filed July 12, 2007

JOEL A. HARPER and KATHY L. HARPER,
Plaintiffs-Appellants/Cross-Appellees,

vs.

PELLA CORPORATION,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Marion County, John D. Lloyd and Gary Kimes, Judges.

Plaintiffs appeal from the district court's grant of summary judgment in favor of defendant on plaintiffs' liability claims. Defendant appeals from the district court's denial of its motion for summary judgment based on the statute of limitations. **AFFIRMED.**

Robert A. Wright Jr. of Wright & Wright, Des Moines, for appellants.

Ross W. Johnson and Carolyn A. Gunkel of Faegre & Benson, L.L.P., Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

This is a premises liability case. Plaintiff, Joel Harper, sued defendant for injuries he sustained in a fall that occurred while he was delivering a Pella employee's household goods to a house in Kentucky owned by defendant. At the time of his fall, plaintiff was carrying empty packing boxes down hardwood stairs in his stocking feet. A later amendment added a claim by Kathy Harper for loss of consortium.

Defendant filed a motion for summary judgment, alleging Kentucky's one-year statute of limitations applied. The district court (Judge Kimes) overruled the motion, finding Iowa's two-year statute of limitations applied. Defendant filed a subsequent motion for summary judgment on plaintiffs' liability claims. The district court (Judge Lloyd) sustained the motion and dismissed the case, finding there was no evidence of a defect on the premises and Joel Harper was aware of any defect. The court also denied plaintiff's motion to amend or enlarge its ruling. We affirm on plaintiffs' appeal. Defendant's cross appeal is moot.

Scope of Review. Review of a ruling on a motion for summary judgment is for correction of errors at law. *Otterberg v. Farm Bur. Mut. Ins. Co.*, 696 N.W.2d 24, 27 (Iowa 2005). If the record shows no genuine dispute of a material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Iowa R. Civ. P. 1.981(3). "When the facts are undisputed and the only dispute concerns the legal consequences flowing from those facts, the must determine whether the district court correctly applied the law." *Perkins v. Dallas Center-Grimes Cmty. Sch. Dist.*, ___ N.W.2d ___, ___ (Iowa 2007).

Appeal. In order to recover on a premises liability claim, a plaintiff must prove the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.
2. The defendant knew or in the exercise of reasonable care should have known:
 - a. the plaintiff would not discover the condition, or
 - b. the plaintiff would not realize the condition presented an unreasonable risk of injury, or
 - c. the plaintiff would not protect [himself] [herself] from the condition.
3. The defendant was negligent in (set forth the particulars of the claim of negligence in failing to protect the plaintiff).
4. The negligence was a proximate cause of the plaintiff's damage.
5. The nature and extent of damage.

Iowa Civil Jury Instruction 900.1 (2003). Concerning element two, however, "a defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position unless the defendant should anticipate the harm despite such knowledge or obviousness." *Id.* 900.6.

Viewing the evidence in the light most favorable to plaintiffs, the evidence shows the hardwood stairs "looked like glass" or appeared "unusually shiny." The finish on the stairs was appropriate for that use and was not slick. Another person walked on the stairs in his stocking feet without falling. One witness said he does not walk on hardwood surfaces in his stocking feet. As Joel Harper was descending the stairs in his stocking feet, he fell and slid down eight stairs.

The district court concluded *being* slick might be a defective condition, but *looking* slick is not. See *Osborn v. Klaber Bros.*, 227 Iowa 105, 109, 287 N.W. 252, 254-55 (1939) (finding evidence a floor *looked* slick insufficient to warrant

submitting negligence to the jury). The court also concluded plaintiff's fall does not prove a defect on the stairs. See *Chevraux v. Nahas*, 260 Iowa 817, 824, 150 N.W.2d 78, 81 (Iowa 1967) (“[T]he mere fact plaintiff fell and was injured is not in itself sufficient to establish, nor does it create a presumption, defendants were negligent.”). Plaintiffs contend the defect was not the condition of the stairs or the fact Joel fell, but rather “that [defendant] knew Joel would be working in his stocking feet while carrying items outside to his truck.” We, like the district court, find no genuine issue as to a material fact concerning the alleged condition that involved an unreasonable risk of injury. The district court correctly applied the law in concluding plaintiffs had not proved the first essential proposition.

The court also determined the evidence shows the condition of the stairs and the possibility of slipping on them while in stocking feet was known and obvious to Joel. The evidence shows Joel noticed the stairs were shiny and he knew he needed to be careful and was trying to be extra careful when descending the stairs. It also shows he did not hold the railing when descending the stairs. Although a possessor of land has a duty to warn an invitee of a dangerous condition, that duty to warn is discharged if the invitee has knowledge of the risk. See Iowa Civil Jury Instruction 900.6. There is no genuine issue of material fact on this proposition. The district court correctly applied the law.

Cross-Appeal. Defendant claims the district court erred in its conflict-of-laws analysis in denying its motion for summary judgment on statute-of-limitations grounds. Because we have affirmed the district court's grant of summary judgment in defendant's favor on the merits of the plaintiffs' claims, the issue raised on cross-appeal is moot.

Conclusion. The evidence fails to show a dangerous condition. It is clear plaintiff had knowledge of the circumstances and appreciated any risk. Because the evidence fails to demonstrate essential elements to prove premises liability, the district court was correct in granting defendant's motion for summary judgment. We affirm the grant of summary judgment in favor of defendant on the merits of the plaintiffs' claims. The claim raised on cross-appeal is moot.

AFFIRMED.