2019 WL 4724739
District Court of Appeal of Florida, Fifth District.

Jayann CONTARDI, AS NEXT FRIEND OF B.C., Appellant,
v.
FUN TOWN, LLC, Appellee.

Case No. 5D18-3518
|
Opinion filed September 27, 2019

Synopsis

Background: Mother of minor patron, who broke her leg when one of her roller skates got caught on lip between skating rink's floor and floor of building, brought premises-liability action on behalf of patron against operator of rink. The County Court, Brevard County, Stephen R. Koons, J., granted operator's motion for summary judgment. Mother appealed.

[Holding:] The District Court of Appeal, Lambert, J., held that difference in levels between floor of rink and floor of rest of building constituted open and obvious danger.

Affirmed.

West Headnotes (6)

[1] Public Amusement and Entertainment
Roller skating

Difference in levels between floor of roller-skating rink and floor of rest of building constituted open and obvious danger, and thus operator of rink had no duty to warn minor patron of difference in levels, although there was dim lighting; patron had earlier successfully exited rink onto floor under same lighting conditions that were present when she fell.

[2] Negligence
Duty to warn

Negligence
Care required in general

An owner or occupier of land owes an invitee two duties: (1) to use ordinary care in keeping the premises in a reasonably safe condition, and (2) to give timely warning of latent or concealed perils that are known or should be known by the owner or occupier but that are not known to the invitee or that by the exercise of due care, could not have been known by the invitee.

[3] Negligence
Duty to warn

An owner or occupier of land has no duty to warn an invitee of an obvious danger.

[4] Negligence
Duty of Store and Business Proprietors

Rule that an owner or occupier of land has no duty to warn an invitee of an obvious danger does not change from a residential to a commercial context.

[5] Negligence
Duty to warn

Uneven floor levels in public places, by themselves, do not constitute latent, hidden, and dangerous conditions for which an owner or occupier of land must provide timely warning to invitees.

[6] Negligence
Duty to warn

Dim lighting does not transform an otherwise-obvious change in floor elevation into a latent danger for which an owner or occupier of land must provide timely warning to invitees.

Appeal from the Circuit Court for Brevard County, Stephen R. Koons, Judge.

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Attorneys and Law Firms

Jarrod G. King, of King Law Firm, Ocala, for Appellant.

Michael R. D'Lugo, of Wicker, Smith, O'Hara, McCoy & Ford, P.A., Orlando, for Appellee.

Opinion

LAMBERT, J.

***1** Jayann Contardi, as the next friend of her minor daughter, B.C., timely appeals the final summary judgment rendered in favor of Fun Town, LLC, in this negligence action. We affirm.

B.C. was injured at a roller-skating rink operated by Fun Town. The injury occurred when B.C. attempted to step off the rink and one of her skates got caught on the lip between the skating rink floor and the floor of the building, causing her to fall and break her leg.

Contardi filed suit on behalf of B.C., alleging that B.C. was an invitee lawfully on the premises when she was injured as a result of a hazardous and dangerous condition created by Fun Town in having "an improper and unmarked change in elevation between the skating rink floor and the building's sub floor." Contardi further alleged that Fun Town breached its duty of care owed to B.C. by failing to warn her of this dangerous condition or otherwise to prevent her from accessing this dangerous area of the skating rink.

Fun Town answered the complaint; and, after deposing B.C., it moved for final summary judgment. Relying on a photograph of the step where B.C. fell as well as B.C.'s deposition, which were both filed of record, Fun Town argued that the difference in the floor levels where B.C. fell was open and obvious, rather than inherently dangerous, and that it therefore had no duty to warn B.C. of the change in elevation between the rink and the building's floor. Fun Town also noted that B.C. had testified in her deposition that during this same visit, she had previously exited the rink onto the building floor without incident, had no difficulty or problems with her skates, and was looking ahead, and not at the floor, when she tripped.

[1] Contardi filed a response but presented no evidence in opposition to the motion. [1] The trial court granted Fun Town's motion and entered final summary judgment, relying on the Florida Supreme Court's decision in *Casby v. Flint*, 520 So. 2d 281, 282 (Fla. 1988) (holding that "[m]ultiple floor levels ... are not inherently dangerous conditions. They are so commonplace that the possibility of their existence is known to all. Warning of such common conditions goes beyond the duty of reasonable care owed to the invitee"). [2] Contardi argues on appeal that *Casby* is inapposite because it involved a fall at a residential, as opposed to a commercial, setting. She further contends that disputed issues of fact exist because the skating rink was "dark" and a "disco light" [3] was being used.

***2** **[2]** **[3]** **[4]** An owner/occupier of land owes an invitee two duties: (1) to use ordinary care in keeping the premises in a reasonably safe condition; and (2) to give timely warning of latent or concealed perils that are known or should be known by the owner or occupier but that are not known to the invitee or that by the exercise of due care, could not have been known by the invitee. *Aventura Mall Venture v. Olson*, 561 So. 2d 319, 320 (Fla. 3d DCA 1990). However, there is no duty to warn an invitee of an obvious danger. *See City of Melbourne v. Dunn*, 841 So. 2d 504, 505 (Fla. 5th DCA 2003) ("An owner of land is not required to give an invitee warning of an obvious danger, and is entitled to assume an invitee will perceive something obvious."). This duty does not change from a residential to a commercial context. *See Bowles v. Elkes Pontiac Co.*, 63 So. 2d 769, 772 (Fla. 1952) (holding, in a negligence case against a corporate defendant for injuries sustained by a plaintiff in a fall in an automobile showroom, that "[i]t was the duty of the invitee to see that which would be obvious to her upon the ordinary use of her senses").

[5] **[6]** Uneven floor levels in public places, by themselves, do not constitute latent, hidden, and dangerous conditions. *See id.* ("It is a matter of general knowledge that there are multiple steps in hotels, restaurants, storerooms and other business establishments throughout Florida ...."); *see also Hogan v. Chupka*, 579 So. 2d 395, 396 (Fla. 3d DCA 1991) (holding, in a negligence case against a store, that a "change in floor levels alone generally does not constitute a dangerous condition"). Dim lighting does not transform an otherwise-obvious change in floor elevation into a latent danger. *See Casby*, 520 So. 2d at 282 ("[T]he amount of interior lighting cannot transform a difference in floor levels into an inherently dangerous condition." (quoting *Schoen v. Gilbert*, 436 So. 2d 75, 76 (Fla. 1983))). According to her own deposition testimony, B.C. had earlier that visit successfully exited the skating rink onto the floor under the same lighting conditions that were present when she fell. Because the uneven floor levels, even in dim lighting, constituted an open and obvious danger, Fun Town had no duty to warn B.C. of the difference in the levels between the rink and the rest of the building floor.

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Lastly, while an obvious danger may discharge a landowner's duty to warn, Fun Town still had a separate duty to maintain the premises in a reasonably safe condition. *See Middleton v. Don Asher & Assocs., Inc.*, 262 So. 3d 870, 872 (Fla. 5th DCA 2019). Contardi did not allege, argue, or present evidence in opposition to Fun Town's summary judgment motion that the condition of the lip or step where B.C. fell was improperly maintained, in disrepair, or negligently designed. *See Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979) ("A movant for summary judgment has the initial burden of demonstrating the nonexistence of any genuine issue of material fact. But once he tenders competent evidence to support his motion, the opposing party must come forward with counterevidence sufficient to reveal a genuine issue. It is not enough for the opposing party merely to assert that an issue does exist."). Accordingly, we conclude that the trial court properly entered summary judgment in favor of Fun Town.

AFFIRMED.

EVANDER, C.J., and JACOBUS, B.W., Senior Judge, concur.

All Citations

--- So.3d ----, 2019 WL 4724739, 44 Fla. L. Weekly D2431

Footnotes

1 Florida Rule of Civil Procedure 1.510(c) provides that a party opposing a motion for summary judgment may timely file its own summary judgment evidence on which it may rely to defeat the motion.

2 The court separately found that summary judgment was proper because under section 768.0755, Florida Statutes (2014), Contardi failed to show that Fun Town had constructive knowledge of the alleged dangerous condition. Section 768.0755 is titled "Premises liability for transitory foreign substances in a business establishment." Fun Town properly concedes here that this statute is inapplicable to this case. This error does not affect our overall disposition of this appeal. In defense of the trial court, Fun Town's trial counsel, who is not its appellate counsel, raised section 768.0755 as an alternative ground for relief in the summary judgment motion.

3 The "disco light" was a disco ball, which is defined as "a ball covered with mirrored facets that is usually suspended from a ceiling (as in a night club) and that rotates to cast reflected light on surrounding surfaces." Merriam-Webster's Unabridged Dictionary (11th ed. 2003), merriam-webster.com/dictionary/disco% 20ball.

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