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STATE OF MICHIGAN

COURT OF APPEALS

BILL RUSU,

Plaintiff-Appellant,

v

TRILOGY HEALTHCARE OF OAKLAND, LLC d/b/a WESTLAKE HEALTH CAMPUS,

Defendant-Appellee.

UNPUBLISHED
September 17, 2026
11:00 AM

No. 375420
Oakland Circuit Court
LC No. 2024-207056-NO

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

This premises-liability action arises out of injuries that plaintiff sustained when an electric door at defendant's facility struck him and caused him to fall as he was walking through the open doorway. His complaint alleged that the door malfunctioned and defendant failed to exercise reasonable care for plaintiff's safety in the circumstances. The trial court granted summary disposition in favor of defendant, concluding that there was no genuine issue of material fact that no defect existed or that defendant had actual or constructive knowledge of any alleged defect. We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

In September 2023, plaintiff fell at home and broke his ribs. Following his fall, plaintiff was a resident at defendant's rehabilitation facility. On October 15, 2023, plaintiff's daughter, Lori Rusu, went to defendant's facility to bring plaintiff home. Plaintiff was sitting in a wheelchair in his room when Lori arrived. Plaintiff shuffled his feet to move the wheelchair to the exit door while Lori walked next to plaintiff. When the pair got to the exit, Lori walked out of the facility so she could move her vehicle closer to the door. Plaintiff remained seated in the wheelchair until Lori returned.

There are two doors at the exit: the first door opens to a vestibule and the second door opens from the vestibule to the outside. Both exit doors are low-energy-power-operated swinging doors that can be opened manually or by activating a push button mounted on the wall next to each

door. Activating the push button causes the door to slowly open outward. The door stays open for a determined length of time—in this case, 20 seconds—and then closes.

A portion of the incident was captured on surveillance video. At 10:35:12, Lori held the wheelchair at the first door as plaintiff hoisted himself to a standing position and moved toward the door while using his cane. At 10:35:43, Lori pressed the button to activate the first door. As the door opened, Lori walked through the doorway and plaintiff followed while using his cane to assist with ambulation. At 10:35:50, the first door reached its full opening at 90 degrees. Both Lori and plaintiff cleared the doorway by 10:35:53. As plaintiff stood in the vestibule, Lori pressed the button to activate the second door. At 10:35:57, the first door began to slowly close after being fully open for approximately seven seconds and reached the fully shut position at 10:36:07.[1] As the first door was closing, Lori walked through the second door and plaintiff slowly followed. Lori then walked to her car to open the door. Lori turned around and saw the second door closing as plaintiff was still in the doorway. Lori estimated that plaintiff had approximately one foot left to clear the doorway. The door struck plaintiff as it was closing, knocking him onto the ground.[2] Lori ran to help plaintiff. The door continued to close while plaintiff was lying on the ground in the doorway. Lori stated that she and the employees who came to assist had to use their bodies to keep the door from closing on plaintiff. As a result of the fall, plaintiff sustained a left hip fracture necessitating surgery.

Prior to the incident, Bob Goralski, the maintenance director of defendant's facility, inspected the doors each morning that he was on shift. However, he only checked that each door properly locked and released; he was never instructed to check "for length of hold-open time." The day after the incident, Brent Hayes, the executive director of defendant's facility, instructed Goralski to inspect the subject door for any issues.[3] Goralski inspected the door and determined that it was working properly. Goralski testified that the doors can be adjusted by five-second intervals to open for a determined amount of time, with a maximum setting of 40 seconds. At the time of the incident, the doors were set to approximately 20 seconds. Both Goralski and Michael Shilton, defendant's regional director of maintenance, testified that defendant did not have a standard protocol for how long the power-operated doors should remain open.[4]

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[1] The total time from the button being activated until the door was fully closed was approximately 23 seconds.

[2] The surveillance video does not show plaintiff being struck by the second exit door or falling to the ground.

[3] On appeal, plaintiff has included the full transcript of the deposition of Brent Hayes. But plaintiff only attached a one-page excerpt from Hayes' deposition to his response to defendant's motion for summary disposition. Because the full transcript was not part of the record before the trial court, we cannot consider it on appeal. See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002) ("This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal.")

[4] On appeal, plaintiff has attached the full transcript from Shilton's deposition. But plaintiff only attached a 2-page excerpt from Shilton's deposition to his response to defendant's motion for

When Goralski reported to Hayes that the door was working properly, Hayes asked if the timer could be adjusted. Goralski confirmed that he could adjust the time. Hayes instructed him to add five seconds. Goralski and Hayes discussed that there was risk of resident elopement if the doors remained open for a longer length of time. Goralski adjusted the subject door's timing interval to 25 seconds, which he stated was an easy adjustment. He also increased the timing intervals on several entrance doors at the facility. Goralski was not aware of any prior incidents of a person being struck by one of the doors.

Plaintiff commenced this premises-liability action alleging that the door malfunctioned and abruptly closed on plaintiff. Plaintiff asserted that defendant failed to use reasonable care to protect him from the hazards of the door and failed to properly maintain the door. Following discovery, defendant moved for summary disposition arguing that there was no evidence that the door malfunctioned or that defendant had actual or constructive notice of any defect. Defendant cited section 156.19 of the American National Standards Institute/Builders Hardware Manufacturers Association standards (ANSI/BHMA standards), which applies to power-assist and low-energy-power-operated swinging doors. Specifically, the ANSI/BHMA standards provide that "the door shall remain at the fully open position for not less than 5 seconds . . . and shall close from 90 degrees to 10 degrees in 3 seconds or longer." Defendant maintained that the subject door complied with this standard on the date of the incident.

In response, plaintiff argued that there were genuine issues of material fact whether defendant took appropriate measures for plaintiff's safety. Relying on the preliminary opinions of Julius Roberts, plaintiff's mechanical engineering expert, plaintiff maintained that defendant could have taken numerous actions to prevent the accident such as extending the timing of the door from 20 seconds to 30 seconds, installing sensors, or using a mat that would detect the presence of a person in the doorway.

Defendant argued that plaintiff was unable to cite any authority or industry standards that would support that these "precautions" were required or that the subject door violated any applicable standards. In addition to complying with the ANSI/BHMA standards, defendant asserted that the subject door complied with section 404.2.8.1 of the American with Disabilities Act (ADA) standards, which requires that door closers "be adjusted so that from an open position of 90 degrees, the time required to move the door to a position of 12 degrees from the latch is 5 seconds minimum."

The trial court dispensed with oral argument and granted summary disposition to defendant, concluding "that Plaintiff failed to meet his burden of establishing that any defect actually existed on Defendant's premises on the day in question and/or that Defendant had actual and/or constructive notice of any alleged defect compelling summary disposition as to Plaintiff's negligence/premises liability claim." Plaintiff moved for reconsideration, which the trial court denied. This appeal followed.

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summary disposition. Because the full transcript was not part of the record before the trial court, we cannot consider it on appeal. See *Sherman*, 251 Mich App at 56.

II. STANDARD OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 59; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(10) is warranted when, "[e]xcept as to the amount of damages, 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). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (cleaned up). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must consider the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*. A court may not assess credibility, weigh evidence, or resolve factual disputes in analyzing whether a genuine issue of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." *Skinner*, 445 Mich at 161.

III. ANALYSIS

Plaintiff argues that the trial court erred by granting summary disposition to defendant because there are genuine issues of material fact whether defendant failed to protect plaintiff from an unreasonable risk of harm and whether it had notice of the potential hazard. We agree.

"All 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, 110; 1 NW3d 44 (2023). In premises-liability actions, the duty owed by a defendant depends on whether the plaintiff is classified as a trespasser, licensee, or invitee. *Id*. at 111. In this case, it is undisputed that plaintiff was an invitee[5] and thus defendant owed plaintiff "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). This duty of care includes not only the obligation "to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Tripp v Baker*, 346 Mich App 257, 263; 12 NW3d 45 (2023) (cleaned up).[6] "[T]he question of breach—whether defendants' conduct in the particular case is below the general standard of care—is a question of fact for the jury." *Kandil-Elsayed*,

[5] "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." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000) (cleaned up).

[6] While this Court's decision in *Tripp* predates our Supreme Court's decision in *Kandil-Elsayed*, we do not read *Kandil-Elsayed* to disrupt or undermine the particular propositions for which *Tripp* is cited in this opinion. See, e.g., *Kandil-Elsayed*, 512 Mich at 148 (stressing that its "decision does not alter the standard of reasonable care owed to an invitee").

512 Mich at 112 (cleaned up). Only "where the evidence presented to a court concerning breach generates no questions of fact [can] the issue be decided by the judge as a matter of law." *Id*. at 112 n 2, citing MCR 2.116(C)(10).

Additionally, a plaintiff "must demonstrate that the premises possessor had actual or constructive notice of the dangerous condition at issue." *Jeffrey-Moise v Williamsburg Towne Houses Coop, Inc*, 336 Mich App 616, 627; 971 NW2d 716 (2021) (cleaned up). Constructive notice requires evidence "that the hazard was of such a character, *or* had existed for a sufficient time, that a reasonable premises possessor would have discovered it." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 11-12; 890 NW2d 344 (2016) (emphasis added). If a hazard could have been discovered with a reasonable inspection, then it is "of such a character . . . that [the invitor] should have knowledge of it." *Id*. at 10 (cleaned up). A question of fact exists for the jury when the defendant "should have known" about the dangerous condition "because of its character . . . ." See *id*. at 11.

In this case, plaintiff alleged in his complaint that "the automatic exit door malfunctioned and abruptly closed on Plaintiff[.]"[7] The surveillance video shows the first door fully open and remain open for approximately seven seconds before it started to close. It took approximately six seconds for the door to close from 90 degrees to 10 degrees. The total time from the button being activated until the door was fully closed was approximately 23 seconds. Plaintiff ambulated through the first door without incident before it started to close. There is no evidence that the door malfunctioned or that the timing of the doors violated the ANSI/BHMA or ADA standards cited by defendant.

However, plaintiff maintains that additional safety precautions could have been taken in light of the circumstances. Specifically, plaintiff's mechanical engineering expert opined:

> - There are recommended safety and reactivation sensors available for low energy power operated swinging doors to keep a door open when a pedestrian is in its swing path such as a door mounted presence sensor.
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> - Had the low energy power operated swinging door been equipped with a safety device such as a door mounted presence sensor, the door would have remained open while Mr. Rusu exited the Westlake facility. Therefore, the incident would not have occurred, allowing Mr. Rusu to exit the facility safely and without injury.

[7] After defendant moved for summary disposition, plaintiff sought leave to amend his complaint to eliminate the allegation that the door was defective and conceded "that the automatic door in question did not malfunction[.]" Because the trial court ultimately granted summary disposition to defendant, it did not rule on plaintiff's motion. On appeal, plaintiff does not claim that the trial court erred by failing to address his motion or grant him leave to amend.

- A power operated pedestrian swinging door could have been installed at the incident location which uses sensors to open and close the door, opposed to a low energy door which requires a "knowing act."

- Safety devices are required for power operated pedestrian swinging doors to control "safety zones." Specifically, an overhead presence sensor or control mat could have been installed to prevent incidents of door contact with pedestrians.

- Had a power operated pedestrian swinging door with the proper safety devices been installed instead of a low energy power operated swinging door, the door would have remained open while Mr. Rusu exited the Westlake facility. Therefore, the incident would not have occurred, allowing Mr. Rusu to exit the facility safely and without injury.[8]

Defendant's maintenance director at the time of the incident, Goralski, was not aware of any regulations requiring that the subject door be equipped with an electric beam to detect a person or object in the doorway. But he conceded that an electric beam would make a door safer for elderly people exiting defendant's facility, which catered to injured and elderly persons. Defendant's regional maintenance director, Shilton, testified that he had never looked into whether sensors were available for the doors.

Although there is no evidence that the subject door was malfunctioning or failed to comply with any standards, an "invitor must inspect the premises to discover any possible dangerous conditions of which the invitor is not aware and take reasonable precautions to protect the invitees from dangers that are foreseeable from use." *Hammack v Lutheran Social Servs*, 211 Mich App 1, 6; 535 NW2d 215 (1995). Defendant's facility catered to injured and elderly persons. As reflected in the surveillance video of the incident, an injured elderly person such as plaintiff moves slowly and, like plaintiff, may require ambulatory aids. It is foreseeable that residents of the facility may be struck by the power-operated doors if they do not move through the doorway fast enough. Construing the evidence in plaintiff's favor, a question of fact exists concerning whether the absence of door sensors constituted a dangerous condition posing an unreasonable risk of harm to invites.

[8] On appeal, plaintiff has attached the transcript from the deposition of Julius Roberts. But Roberts' deposition was taken *after* plaintiff filed his response to defendant's motion for summary disposition and plaintiff did not supplement his response with Roberts' deposition testimony. Because this transcript was not part of the record before the trial court, we cannot consider it on appeal. See *Sherman*, 251 Mich App at 56. We also acknowledge that defendant moved to preclude Roberts from testifying at trial. But the motion was filed after defendant moved for summary disposition and was never decided by the trial court. Additionally, defendant did not challenge the admissibility of Roberts' report or opinion in its briefing in support of its motion for summary disposition. Accordingly, the admissibility of Roberts' opinions is not at issue in this appeal.

While there was no evidence that anyone else suffered an injury associated with a power-operated door closing on them at the facility, that fact does not negate defendant's notice of the dangerous condition or eliminate its duty to abate it because "it would not be competent to prove an absence of accidents as tending to show an absence of negligence." *Larned v Vanderlinde*, 165 Mich 464, 468; 131 NW 165 (1911). "Evidence of absence of accidents usually involves generally unreliable negative evidence and does not tend directly to prove absence of negligence." *Grubaugh v City of St Johns*, 82 Mich App 282, 289; 266 NW2d 791 (1978) (cleaned up). Defendant owed plaintiff a duty to reasonably inspect the door to determine its safety and discern any hidden dangers. Defendant had an inspection procedure to identify and correct problems with the doors but it did not include the timing of the doors closing. Viewing the evidence in the light most favorable to plaintiff, a trier of fact could reasonably determine that the lack of an electric sensor or other safety precautions in the subject doorway was of such a character that defendant would have discovered it and recognized the potential striking hazard through reasonable inspection. In sum, a question of fact exists concerning defendant's actual and constructive notice of the alleged hazard.

Whether defendant adequately "ma[d]e [its] premises safe," *Stitt*, 462 Mich at 597, by exercising reasonable care to protect invitees from being struck by the door is for the jury to decide, see *Kandil-Elsayed*, 512 Mich at 112.

IV. CONCLUSION

We conclude that defendant owed plaintiff the duty of care afforded to an invitee, and that there are genuine issues of material fact as to whether defendant breached that duty. Accordingly, the trial court erred by granting defendant's motion for summary disposition.

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

/s/ Mariam S. Bazzi
/s/ Sima G. Patel