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No Going Back: Court of Appeals Rules Against Use of Photographs Taken a Year Later to Hold Premises Liability Defendant Liable

By Joseph J. Giacalone **April 15, 2025**

On January 17, 2025, the Michigan Court of Appeals issued its opinion in *Barbara Martin v New Baltimore Civic Club*.[1] In this premises liability action, the Plaintiff-Appellant sued the Defendant-Appellee for a slip and fall incident occurring at the Defendant-Appellee's facility during a celebration of life event in June 2022. The Plaintiff-Appellant caught her foot on a rug and then fell on a concrete floor, causing her to break her hip and require surgery. The Plaintiff-Appellant sued Defendant-Appellee in November 2022, alleging that the Defendant-Appellee failed to keep the premises free from any potentially dangerous, hazardous, or unsafe conditions.

In November 2023, the Defendant-Appellee filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10), alleging that the Plaintiff-Appellant failed to show that the Defendant-Appellee knew or should have known of any hazardous condition with the rug, or that it was negligent for having failed to remove the rug. The Plaintiff-Appellant's response to the Defendant-Appellee's Motion for Summary Disposition incorporated photographs that were taken nearly a year post-accident, and the photographs showed the rug to have frayed edging and an exposed open loop near the rubber edging. The Plaintiff-Appellant argued that had the Defendant-Appellee inspected the rug, it would have noticed the defective condition. In its Reply Brief, the Defendant-Appellee argued that the Plaintiff-Appellant's response was purely speculation. The trial court agreed with Defendant-Appellee and granted Defendant-Appellee's Motion for Summary Disposition. The Plaintiff-Appellant then filed a Motion for Reconsideration, which was denied, and subsequently filed her appeal.

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> As held in *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7 (2016), mere speculation as to how a premises liability trip and fall incident occurred, without evidence of showing actual or constructive notice as to the premises owner of a dangerous condition, is not enough to prove liability against a defendant premises owner. Further, photographs taken nearly a year post-accident of the alleged rug neither confirmed the same condition as the day of the accident nor estimated notice against the Defendant-Appellant.

On appeal, the Plaintiff-Appellant argued that the trial court erred in failing to find a question of fact because the photos she took showed frayed edging on the rug, and that the frayed edges provided showed the Defendant-Appellee had actual or constructive notice of the dangerous conditions on the premises. The Court of Appeals cited to precedent holding that a party moving for summary disposition must submit evidence that "'negates an essential element of the nonmoving party's claim,' or '[demonstrates] to the court that the nonmoving party's

[1] *Barbara Martin v New Baltimore Civic Club*, unpublished opinion of the Michigan Court of Appeals, Docket No. 369962 (January 17, 2025).

evidence is insufficient to establish an essential element of the . . . claim.'" *Martin* at *2, citing *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7 (2016) (citing *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996)).

For a successful claim in premises liability, the Court of Appeals held that the Plaintiff-Appellant was required to show 1) the Defendant-Appellee premises owner breached a duty to the invitee, 2) the breach "constituted the proximate cause of damages suffered[,]" 3) the premises owner knew or should have known of "a dangerous condition and fail[ed] to protect invitees via repair, warning, or other appropriate mitigation of the danger under the given circumstances[,]" and 4) damages resulted. *Martin* at *2, citing *Albitus v Greektown Casino, LLC*, 339 Mich App 557, 562-563 (2021) (cleaned up). Thus, the Plaintiff-Appellant could not prove a claim for premises liability without showing actual or constructive notice against the Defendant-Appellee.

The Court of Appeals held that in viewing the evidence in the light most favorable to the Plaintiff-Appellant, the Plaintiff-Appellant failed to establish that a genuine issue of material fact existed to support her claims against the Defendant-Appellee. Contrary to the Plaintiff-Appellant's assertions, the deposition testimony of the host of the event did not establish actual or constructive notice. The host testified that after the Plaintiff-Appellant fell, the host rolled up the rug to prevent anyone else from falling because of the rug. The host described the rug as "disheveled," but did not testify as to any other way such that there was an apparent, obvious defect with the rug at the time of the Plaintiff-Appellant's fall.

In addition, the Court of Appeals was unpersuaded by the photos provided by the Plaintiff-Appellant, which did not confirm that the photos were of the same rug, nor were they contemporaneous to the accident, as the photographs were taken a year later. The photographs of the rug failed to show whether the Defendant-Appellee had actual or constructive notice of the allegedly dangerous and obvious defect. The only testimony provided to suggest a defect existed, according to the Court of Appeals, was the Plaintiff-Appellant's self-serving testimony that she fell in a loop on the rug on the day of the incident. No witness testimony or other substantively admissible evidence produced during discovery established that Defendant-Appellee knew of or should have known of the allegedly hazardous condition, which was fatal to the claim at the trial court and the Court of Appeals.

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We welcome your questions – please contact:

Premises Liability Practice Group Chair
Mark F. Masters | mmasters@secrestwardle.com or 248-539-2844

For questions pertaining to this article
Joseph J. Giacalone | jgiacalone@secrestwardle.com or 248-539-2837

Troy | 248-851-9500
Grand Rapids | 616-285-0143

www.secrestwardle.com

Contributors

Premises Liability Practice Group

Chair
Mark F. Masters

Editors
Sandie Vertel
Sue Willcock

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