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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-001885-MR

MARIA OLIVAS — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NOS. 04-CI-00462
AND 03-CI-03028

MUIR STATION, LLC; ANGELA LEVY-BECK;
AND ANTHONY BECK — APPELLEES

OPINION
REVERSING AND REMANDING

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BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: Maria Olivas appeals from a summary judgment of the Fayette Circuit Court, entered August 20, 2004, dismissing her claim for damages against Muir Station, LLC; Angela Levy-Beck; and Anthony Beck. The Becks reside on property, owned by the corporation, known as Gainesway Farm in Lexington. In February 2003, while working at the Becks' home as a part-time

nanny, Olivas found herself stranded on a second-floor balcony when the balcony doors closed and locked behind her. After about twenty minutes of fruitlessly calling for help, she tried to extricate herself by climbing over the balcony railing and down an adjacent wall by means of window ledges and a rain gutter. Unfortunately, she lost hold of the icy gutter, fell, and broke several bones in her left arm and leg.

In July 2003, she brought suit against the Becks, and in February 2004, brought a separate but virtually identical action against the Becks and the corporation. The two actions were consolidated by order entered March 1, 2004. Olivas contends that the Becks negligently failed to warn her that the balcony doors were specially designed to close and lock automatically. In granting the Becks' motion for summary judgment, the trial court ruled that the Becks did not have a duty to warn Olivas about the self-locking doors both because such a duty would be impracticably burdensome and because the risk of unexpected locking was an obvious risk posed by all exterior doors against which people could be expected to protect themselves. In addition to maintaining that the court's legal conclusions were erroneous, Olivas insists that the court's order denied her a meaningful opportunity for discovery since it came the day before she was scheduled to inspect the doors and before she had deposed the Becks. Agreeing with Olivas that

summary judgment was inappropriately granted, we reverse and remand.

The standard of review on appeal of a summary judgment is whether the circuit court correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law.[1] Summary judgment is only proper when, after an ample opportunity for discovery, it appears virtually certain that the non-movant will not be able to produce evidence at trial warranting a judgment in his or her favor.[2] In ruling on a motion for summary judgment, the court is required to construe the record in a light most favorable to the party opposing the motion.[3]

"The duty owed by the person in possession of land to others whose presence might reasonably be anticipated, is the duty to exercise reasonable care in the circumstances."[4] As the parties note, Olivas was an invitee on the premises the Becks occupied, and the Becks owe a duty to their invitees to discover the existence of dangerous conditions on the premises to which

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[1] Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).

[2] Hoke v. Cullinan, 914 S.W.2d 335 (Ky. 1995); Steelvest, Inc. v. Scansteel Service Center, Inc., *supra;* Pendleton Brothers Vending, Inc. v. Commonwealth Finance and Administration Cabinet, 758 S.W.2d 24 (Ky. 1988).

[3] Steelvest, Inc. v. Scansteel Service Center, Inc., *supra.*

[4] Perry v. Williamson, 824 S.W.2d 869, 875 (Ky. 1992).

the invitee is apt to be exposed and either to correct them or to warn of them.[5] As her employer, moreover, the Becks owed Olivas the duty to provide a reasonably safe place to work and to warn Olivas of the dangers inherent in the place of employment.[6] On the other hand, an occupier of premises generally need not take precautions or even warn against dangers that are known to the invitee or are so obvious that the invitee may be expected to discover them and protect herself.[7]

The trial court thought it impractical to expect the Becks to warn their invitees of the self-closing balcony doors when most invitations would not extend to the bedroom off of which the balcony extended. For most invitees this is no doubt true, and for those invitees we agree with the trial court that the Becks would have no duty to warn them of a risk to which they would not be apt to be exposed. Olivas was not a mere visitor to the home, however. Her invitation extended to the bedroom where the children were accustomed to watch television and it is not unreasonable to suppose that it extended to the attached balcony as well. Olivas testified at least that her invitation extended to anywhere in the house where the children

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[5] Johnson v. Lone Star Steakhouse & Saloon of Kentucky, Inc., 997 S.W.2d 490 (Ky.App. 1999) (citing Perry, *supra*).

[6] Theresa Ludwig Kruk, "Employer's Liability for Injury to Babysitter in Home or Similar Premises," 29 ALR4th 304 (1984).

[7] Bonn v. Sears, Roebuck & Company, 440 S.W.2d 526 (Ky. 1969).

might go, including the balcony, and for summary judgment purposes we are obliged to accept that testimony as true. Because Olivas could thus be expected to encounter the doors, if they posed a hidden risk of harm then the Becks owed her a warning.

The trial court ruled, however, that whatever risk the doors posed was obvious inasmuch as any door might swing shut behind one. We do not agree, first, that just any door poses an appreciable risk of unexpectedly closing and locking, since most doors, at least most residential doors, will not do so without a person's intervention. Be that as it may, the court's ruling ignores the fact, conceded by the Becks, that these were not ordinary doors but security doors designed to close and latch themselves. Clearly, such doors markedly increase the risk that one will be unexpectedly and unintentionally locked out as occurred in this case. Such a risk was a risk of harm, not only because of the likely exposure to winter weather, but also because a babysitter, stranded on the balcony apart from her charges, was likely to feel compelled, as Olivas did, to attempt the climb down.[8] Unless their special nature was apparent to someone unfamiliar with such doors, a fact which only further

[8] *See Restatement (Second) of Torts* § 445 (1965): "If the actor's negligent conduct threatens harm to another's person, land, or chattels, the normal efforts of the other . . . to avert the threatened harm are not a superseding cause of harm resulting from such efforts."

discovery could reveal, the trial court erred by deeming the heightened risk they posed obvious and thus not within the Becks' duty to warn.

Because it is not clear from the record as it has thus far been developed that the heightened risk posed by the security doors was obvious, summary judgment should not have been awarded. If, on remand, it appears that reasonable minds could believe the risk hidden, then Olivas's claim should proceed to trial. Accordingly, we reverse the August 20, 2004, order of the Fayette Circuit Court and remand for additional proceedings consistent with this opinion.

TACKETT, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS.

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