

Rel: May 8, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2025-2026

SC-2025-0389

Sela Joseph

v.

Caritas of Birmingham

**Appeal from Shelby Circuit Court
(CV-22-900262)**

WISE, Justice.

The plaintiff below, Sela Joseph, appeals from a summary judgment entered in favor of the defendant below, Caritas of Birmingham ("Caritas"), by the Shelby Circuit Court. We reverse and remand.

Facts and Procedural History

Caritas is a nonprofit corporation that operates in Shelby County. Erin Colafrancesco, the corporate representative for Caritas, testified that Caritas is religious mission that includes a community, a pilgrimage site, and a print shop in Shelby County. On February 25, 2022, two of Caritas's missionaries were married, and their wedding reception was held at Caritas's facility. Colafrancesco testified that the reception "was hosted by all of us who live and work there." She also testified that she organized the catering services for the reception, hiring a catering company known as Yellow Bicycle Catering or RSYB ("Yellow Bicycle"). Colafrancesco signed the catering contract, wrote a check for the catering services, and sent instructions to Yellow Bicycle regarding the event. She further testified that, just before the reception, she learned that Yellow Bicycle was shorthanded and would provide "different staff" to work at the event.

In February 2022, Joseph operated a catering business. Joseph testified that Richard Wilton, another caterer who was associated with Yellow Bicycle, asked her to help with the reception at Caritas's facility. Joseph testified that she worked at the event to help Wilton as a friend. However, she did receive payment from him for her work. As part of her

work for the wedding reception, Joseph arranged for a staff of people to work at the event. She understood that they were to be paid by Wilton.

Although Joseph had been to Caritas's facility before the date in question, she had never been to the building where the reception was held before that day. Joseph rode to Caritas's facility with Ron Goldfon, who was one of the people she had hired to work at the reception. It was daylight when Joseph and Goldfon arrived at the location. Goldfon dropped Joseph off at the front of the building and then went to park. Joseph did not know where Goldfon parked. Joseph testified that she did not bring the food for the reception and that she did not participate in unloading the food and bringing it inside the building. She helped put food out, serve, and clean up. She did not help with loading the vehicles after the event.

The contract called for the catering staff to work until 7:00 p.m. When she got ready to leave, Joseph asked Annette Colafrancesco about how she should leave the building. Annette told her to follow a girl with brown hair. The girl led Joseph to an elevator, which they took downstairs. The inside of the building in that location was dimly lit. Joseph recalled seeing a standard door and a garage-style door. The girl

directed Joseph to exit through the standard door. Evidence was presented indicating that there was a loading dock near that building exit. The girl did not exit the building with Joseph or warn her that there was a loading dock nearby.

It was dark at the time Joseph left the building, and there was no exterior lighting in that area. Joseph testified that, when she walked outside, it was very dark; that she did not see any lights out there; and that there was a little bit of moonlight. She testified that she saw taillights from a vehicle she believed to be Goldfon's at the end of the driveway, but those taillights did not illuminate the area. After exiting the building, Joseph took "maybe two strides" or a few steps and then walked off of a wall or the loading dock. Joseph testified that she could not see the loading dock. Joseph testified that she sustained significant injuries as a result of the fall.

On May 4, 2022, Joseph sued Caritas and various fictitiously named defendants in the trial court.¹ Joseph asserted claims of negligence, wantonness, and negligent or wanton hiring, training, and

¹Joseph did not substitute any parties for any of the fictitiously named defendants.

supervision. In her complaint, Joseph alleged that she was a business invitee on Caritas's premises on the night in question; that Caritas had negligently or wantonly failed to maintain its premises in a safe condition; that she was directed by Caritas personnel to exit through an unlit loading-dock exit without being warned about the presence of the loading dock; and that, as a result, she fell from the loading dock and sustained serious and permanent injuries.

On June 6, 2022, Caritas filed its answer to the complaint. Caritas subsequently moved for a summary judgment as to Joseph's claims against it. In its motion for a summary judgment, Caritas argued that Joseph was a licensee, not a business invitee; that its only duty to her was to not willfully or wantonly cause her injury; and that Joseph's injuries were not caused by a willful or wanton act by Caritas. Caritas also argued that, even if Joseph was a business invitee, it did not breach its duty to Joseph. Specifically, it asserted that, if Joseph was a business invitee, "Caritas owed a duty to use reasonable care and diligence to keep the premises in a safe condition, or to give warning of a dangerous condition where with the exercise of ordinary care, the danger can be avoided"; that it did not owe a duty to warn Joseph about a danger that

is open and obvious; and that "[t]otal darkness, possibly concealing an unseen and unknown hazard, presents an open and obvious danger to someone proceeding through unfamiliar surrounds, as a matter of law." (Quoting Ex parte Industrial Distrib. Servs. Warehouse, Inc., 709 So. 2d 16, 19 (Ala. 1997) (emphasis added).) It went on to argue:

"The darkness concealed the presence of the unknown hazard, the loading dock. Nevertheless, Ms. Joseph proceeded through the darkness and got injured. This is not a question for the jury but is a preclusion of liability as a matter of law. McClurg v. Birmingham Realty Co., 300 So. 3d 1115, 1119 (Ala. 2020)."

In her response, Joseph argued that substantial evidence showed that she was an invitee on Caritas's premises and, thus, that Caritas owed her a higher duty of care. She also argued that the "total darkness" cases relied on by Caritas in its summary-judgment motion did not apply and that there were genuine issues of material fact about the light levels in the location where she fell. Thus, she argued that the danger of the loading dock from which she fell was not open and obvious as a matter of law.

After conducting a hearing, the trial court entered a summary judgment in favor of Caritas. Joseph filed a postjudgment motion, which was denied by operation of law. This appeal followed.

Standard of Review

"This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce "substantial evidence" as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. "[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

Byrne v. Fisk, 385 So. 3d 973, 977 (Ala. 2023) (quoting Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004)).

Discussion

In her brief, Joseph argues that the trial court erroneously granted Caritas's motion for a summary judgment as to her negligence claim.²

²Joseph does not present any argument on appeal regarding her claims of wantonness and negligent or wanton hiring, training, or

"In [a] premises-liability case, the elements of negligence "are the same as those in any tort litigation: duty, breach of duty, cause in fact, proximate or legal cause, and damages.'" Ex parte Harold L. Martin Distrib. Co., 769 So. 2d 313, 314 (Ala. 2000) (quoting E.R. Squibb & Sons, Inc. v. Cox, 477 So. 2d 963, 969 (Ala. 1985), quoting in turn David G. Epstein, Products Liability: Defenses Based on Plaintiff's Conduct, 1968 Utah L. Rev. 267, 270 (1968))."

Sessions v. Nonnenmann, 842 So. 2d 649, 651 (Ala. 2002).

A.

First, we must determine Joseph's status on Caritas's premises at the time of the fall.

"Regarding the duty element of a premises-liability negligence claim, this Court has explained:

"The duty owed by a landowner to an injured party depends upon the status of the injured party in relation to the landowner's land, i.e., is the injured party a trespasser, a licensee, or an invitee. ... A person who enters land with the landowner's consent to bestow some material or commercial benefit is an "invitee," and a landowner owes an invitee the duty to keep the premises in a reasonably safe condition and, if the premises are unsafe, to warn of hidden defects and dangers that are known to the landowner but that are hidden or unknown to the invitee.'

Galaxy Cable, Inc. v. Davis, 58 So. 3d 93, 98 (Ala. 2010)(footnote omitted)."

supervision. Accordingly, we will not consider the propriety of the trial court's judgment as to those claims.

Byrne, 385 So. 3d at 978. Joseph argues that she was a business invitee who bestowed a material benefit upon Caritas by providing catering services for the wedding reception. Caritas asserts that Joseph was merely a licensee because, it alleges, it did not benefit from Joseph's services; that "[t]he exchange of services and benefits flowed directly between Wilton and Joseph"; and that "[t]he only other indirect beneficiaries of Joseph's staffing and catering services were the wedding guests." Caritas's brief, p. 27.

"[A]s this Court held in Autry v. Roebuck Park Baptist Church, 285 Ala. 76, 229 So. 2d 469 (1969), an invitation to come upon another's property, whether it be express or implied, does not, in itself, make one who accepts the invitation an invitee in the legal sense. See also 65 C.J.S. Negligence § 63(41) (1966). In Autry, the Court quoted as authority the following language from McCulty v. Hurley, 97 So. 2d 185 (Fla. 1957):

"'In order for such relationship (invitor-invitee) to arise the person entering onto the premises, i.e. the invitee, must have done so for purposes which would have benefited the owner or occupant of the premises, i.e. the invitor, or have been of mutual benefit to the invitee and the invitor. And as we view it this benefit must be of a material or commercial rather than of a spiritual, religious, or social nature. This same reasoning is followed in our cases which hold persons invited into one's home as social guests to be licensees rather than invitees even though they are expressly invited to

enter the premises of the host. Goldberg v. Straus, [45 So. 2d 883 (Fla. 1950)].'

"Thus, acquiring the status of an invitee depends upon the nature of the visit which brings a visitor on the premises rather than the acts of the owner which precede the visitor's coming. Nelson v. Gatlin, 288 Ala. 151, 258 So. 2d 730 (1972). The nature of the visit must bestow a material or commercial benefit upon the invitor."

Quillen v. Quillen, 388 So. 2d 985, 988-89 (Ala. 1980) (plurality opinion).

In this case, Caritas hosted the wedding reception for two of its missionaries. The undisputed evidence established that that Caritas contracted with Yellow Bicycle to provide catering services for the reception, and Caritas asserts that it paid for the reception. Additionally, the evidence established that Joseph provided catering services at the reception in furtherance of the contract between Caritas and Yellow Bicycle and that Wilton paid her to do so. Thus, the evidence established that Caritas received a material benefit from Joseph's presence on the premises. Accordingly, Joseph was a business invitee at the time of her fall. Cf. Bush v. Alabama Power Co., 457 So. 2d 350 (Ala. 1984) (holding that an employee of an independent contractor for the premises owner was an invitee).

B.

Next, we must determine whether Joseph presented substantial evidence demonstrating that Caritas breached the duty it owed to her.

"The scope of the duty owed by an invitor to a business invitee is as follows:

"Alabama law is well-settled regarding the scope of the duty an invitor owes a business invitee. 'The owner of premises owes a duty to business invitees to use reasonable care and diligence to keep the premises in a safe condition, or, if the premises are in a dangerous condition, to give sufficient warning so that, by the use of ordinary care, the danger can be avoided.' Armstrong v. Georgia Marble Co., 575 So. 2d 1051, 1053 (Ala. 1991)"

"South Alabama Brick Co. v. Carwie, 214 So. 3d 1169, 1176 (Ala. 2016) (emphasis omitted).'

"Unger v. Wal-Mart Stores E., L.P., 279 So. 3d 546, 550 (Ala. 2018).

"The duty to keep premises safe for invitees applies only to defects or conditions which are in the nature of hidden dangers, traps, snares, pitfalls, and the like, in that they are not known to the invitee, and would not be observed by him in the exercise of ordinary care. The invitee assumes all normal or ordinary risks attendant upon the use of the premises, and the owner or occupant is under no duty to reconstruct or alter the premises so as to obviate known and obvious dangers, nor is he liable for injury to an invitee resulting from a

danger which was obvious or should have been observed in the exercise of reasonable care."

"Lamson & Sessions Bolt Co. v. McCarty, 234 Ala. 60, 63, 173 So. 388, 391 (1937) (quoting 45 C.J. § 244, p. 837). There is no duty to remedy, or to warn about, open and obvious hazards. DolgenCorp, Inc. v. Taylor, 28 So. 3d 737, 742 (Ala. 2009). Whether an alleged danger is open or obvious is an objective inquiry. Id. A hazard is open and obvious if it would be apparent to, and recognized by, a reasonable person in the position of the invitee. Hines v. Hardy, 567 So. 2d 1283, 1284 (Ala. 1990). The existence of a duty is a question for the court. Unger, 279 So. 3d at 550."

Owens v. Ganga Hosp., LLC, 352 So. 3d 1172, 1174-75 (Ala. 2021).

"This Court has consistently held that "[q]uestions of openness and obviousness of a defect or danger ... are generally not to be resolved on a motion for summary judgment." Ex parte Kraatz, 775 So. 2d 801, 804 (Ala. 2000) (quoting Harding v. Pierce Hardy Real Estate, 628 So. 2d 461, 463 (Ala. 1993)); see Denmark v. Mercantile Stores Co., 844 So. 2d 1189, 1195 (Ala. 2002) ('Whether a condition is open and obvious is generally a question for the jury. '); Barnwell v. CLP Corp., 235 So. 3d [238,] 244 [(Ala. 2017)] ("[T]he question whether a danger is open and obvious is generally one of fact." (quoting Howard v. Andy's Store for Men, 757 So. 2d 1208, 1211 (Ala. Civ. App. 2000))). Exceptions to this general rule are narrow, permitted only in circumstances where reasonable minds could not differ regarding the obviousness of the danger. See Jones v. Newton, 454 So. 2d 1345, 1348 (Ala. 1984) (holding that summary judgment is appropriate only where the nonmovant could not 'conceivably prevail'). Examples of such exceptional cases generally fall into three categories: (1) cases in which the plaintiff has admitted carelessness or subjective knowledge of the condition, see, e.g., Browder v. Food Giant, Inc., 854 So. 2d 594, 596 (Ala. Civ. App. 2002) (finding open and obvious

danger in grocery store parking lot where plaintiff admitted that she was not paying attention as she walked); (2) cases in which the type of condition was so obviously dangerous as to preclude liability under any circumstances, see, e.g., Ex parte Industrial Distribution Servs. Warehouse, Inc., 709 So. 2d 16, 19 (Ala. 1997) ('Total darkness, possibly concealing an unseen and unknown hazard, presents an open and obvious danger to someone proceeding through unfamiliar surroundings, as a matter of law. '); and (3) cases in which, under the particular circumstances, no reasonable jury could find that the danger was not open and obvious, see, e.g., Jones Food Co. v. Shipman, 981 So. 2d 355, 363 (Ala. 2006) (holding that 'a ladder leaned against the facade of [a] restaurant at a 45° angle to the ground,' was an open and obvious danger under the circumstances). This case does not belong in the first category because McClurg has not admitted carelessness or knowledge of the danger.

"The second category -- types of conditions that are so obvious that they per se preclude liability -- is particularly narrow. This Court has applied this per se rationale to only one condition: total darkness. See Industrial Distribution, 709 So. 2d at 19 ... ('Total darkness ... presents an open and obvious danger to someone proceeding through unfamiliar surroundings, as a matter of law. '). Such a case has been called a "'step-in-the-dark" case.' Id. at 21 (Cook, J., concurring in the result). This Court has also suggested that an open body of water would constitute an open and obvious danger per se. See Owens v. National Sec. of Alabama, Inc., 454 So. 2d 1387, 1389-90 (Ala. 1984) (observing that, like darkness, water 'is an open and obvious danger, and hence no duty to warn exists even where the water conceals dangers beneath the surface')."

McClurg v. Birmingham Realty Co., 300 So. 3d 1115, 1119 (Ala. 2020)

(plurality opinion).

In its motion for a summary judgment, Caritas argued that it did not have a duty to warn in this case because the darkness in the area where the fall occurred was an open and obvious danger. In Ex parte Industrial Distribution Services Warehouse, Inc., 709 So. 2d 16 (Ala. 1997), this Court addressed whether a premises owner, who asserted that darkness constituted an open and obvious danger, was entitled to a summary judgment as to the plaintiff's negligence claim against it. In that case, David Blount, the vice president of Industrial Distribution Services Warehouse, Inc. ("Industrial Distribution"), discovered that Industrial Distribution's warehouse had lost electricity and had sustained a partially collapsed roof, broken pipes, and flooding in the warehouse basement. Subsequently, Blount contacted Billy Glenn Jackson, the owner and operator of Southern Equipment and Chemical Company, to hire him to remove the water from the basement. When Jackson arrived at the warehouse, a firetruck and firemen were outside, Jackson spoke with the firemen, and the firemen told Jackson that there was no electricity in the warehouse. Jackson asked one of the firemen to go inside with him to help him find the man who had telephoned him, and the fireman told him that there was a man with their captain and

that he would show Jackson where they were. Jackson followed the fireman into the warehouse, and the only light came from holes in the roof. Although the fireman had a flashlight, Jackson did not. At some point, the fireman stopped and called for his captain. After the captain replied, Jackson saw the silhouettes of two people who were approximately 50 feet away, and one of those people was holding a flashlight that was pointing downward. Jackson took a step toward the silhouettes and fell approximately five feet off an interior loading dock. Jackson could not see that he had been standing on the edge of the loading dock and had assumed that he was stepping onto a floor. Jackson was injured as a result of the fall.

Jackson subsequently sued Industrial Distribution, asserting claims of negligence and wantonness. Jackson alleged "that the loading dock was defective and/or unreasonably dangerous; that Industrial Distribution had failed to remedy the defect and/or danger that caused him to fall; and that Industrial Distribution had failed to warn him about the defect and/or danger posed by the loading dock." 709 So. 2d at 17. The trial court entered a summary judgment in favor of Industrial Distribution. On appeal, the Court of Civil Appeals affirmed the

summary judgment as to Jackson's wantonness claim, but it reversed the summary judgment as to his negligence claim. Jackson v. Industrial Distrib. Servs. Warehouse, Inc., 709 So. 2d 12 (Ala. Civ. App. 1997). This Court granted Industrial Distribution's petition for a writ of certiorari to review the Court of Civil Appeals' decision reversing the trial court's judgment as to the negligence claim. This Court addressed this issue, stating:

"Relying primarily on Owens v. National Security of Alabama, Inc., 454 So. 2d 1387 (Ala. 1984), Industrial Distribution contends that this is the typical 'step in the dark' case, in which there is no duty on an invitor to warn of, or protect against, unseen hazards that an invitee may encounter on the invitor's premises under conditions of darkness. According to Industrial Distribution, the Court of Civil Appeals misapplied Owens to the facts of this case. Jackson, on the other hand, contends that this is not the typical 'step in the dark' case and, therefore, that Owens does not control. He argues that his theory of liability was not predicated on the existence of a duty on Industrial Distribution to warn him that the warehouse was dark inside; rather, he says, a jury question was presented as to whether Industrial Distribution failed to exercise reasonable care by not erecting and maintaining a guardrail across the loading dock and as to whether he acted reasonably under the circumstances by accompanying a fireman into the warehouse. The essence of Jackson's argument, as we understand it, is that Owens does not apply because, he argues, there is evidence that he was exercising reasonable care when he entered the warehouse with the fireman. That being the case, Jackson maintains, a jury should be allowed to determine whether he acted reasonably under the

circumstances and whether Industrial Distribution acted negligently by not erecting a guardrail across the loading dock. The Court of Civil Appeals, agreeing with Jackson, stated:

"'Jackson argues that the loading dock itself was defective or unreasonably dangerous and that [Industrial Distribution] had failed to remedy that condition. His expert witness testified that the loading dock should have had some type of physical guard or railing in place to safeguard against the hazard of a five-foot drop inside a building. Furthermore, Jackson did not attempt to walk through the dark warehouse alone, but entered the building with a fireman who apparently had been inside before he offered to take Jackson to the owner. The circumstances of this case do not conform to the typical "step in the dark" case in which a landowner is absolved of any duty to warn of unseen hazards. We cannot say that the alleged hazard presented by the loading dock was open and obvious as a matter of law.'

"709 So. 2d at 15.

"Assuming that Jackson was an invitee when he entered Industrial Distribution's warehouse, a fact that is conceded by Industrial Distribution for purposes of this appeal, then Industrial Distribution was under a duty to use reasonable care and diligence to keep the premises in a safe condition, or, if the premises were in a dangerous condition, to give sufficient warning so that, by use of ordinary care, Jackson could avoid the danger. Armstrong v. Georgia Marble Co., 575 So. 2d 1051, 1053 (Ala. 1991). It is well established, however, that an invitor is not liable for injuries to an invitee resulting from a danger that was known to the invitee or that the invitee should have observed through the exercise of reasonable care. If the danger is open and obvious, the invitor

cannot be held liable. Williams v. Newton, 526 So. 2d 18 (Ala. 1988). Total darkness, possibly concealing an unseen and unknown hazard, presents an open and obvious danger to someone proceeding through unfamiliar surroundings, as a matter of law. Owens, supra.

"In Owens, the injured plaintiff, an employee of an independent contractor performing maintenance work on the premises of Montgomery Food Processors, was injured when he tripped over a forklift while walking to work through a dark portion of Montgomery Food Processors' plant. The plaintiffs sued the company in charge of the plant's security, contending that it had negligently caused or allowed the lights to be turned off without warning the injured plaintiff that the lights would be off. The trial court entered a summary judgment for the security company. This Court affirmed, stating in part:

"'Before reaching the issue of whether Owens assumed the risk or was contributorily negligent, we must first find some evidence that National Security breached its duty of care by failing to warn Owens that the lights were out. There is no duty to warn when the danger is fully known to the party who was injured. Crawford Johnson & Co. v. Duffner, 279 Ala. 678, 681, 189 So. 2d 474, 476 (1966). Similarly, there is no duty to warn of open and obvious defects which the injured party should be aware of in the exercise of reasonable care. Shaw v. City of Lipscomb, 380 So. 2d 812, 814 (Ala. 1980); Tice v. Tice, 361 So. 2d 1051, 1052 (Ala. 1978); Hand v. Butts, 289 Ala. 653, 656, 270 So. 2d 789, 791 (1972). The law does not require the doing of a useless act.

"The evidence is undisputed that Owens knew that he was entering a room which was not lighted. Although the entrance area was

somewhat illuminated by natural light, the interior of the cavernous building was obviously dark. Owens admitted using a lighter and shuffling his feet, undisputed facts which prove his knowledge of the dark conditions. Even without a warning, a reasonable person in the position of Owens would know the room was dark. Darkness is a plain condition which is open and obvious. Reasonable persons do not walk the length of a large, windowless, and unlighted building and not realize that the way is dark.

"Owens contends that the darkness, coupled with the position of the forklift, led to a duty to warn. It is important to note that Owens does not argue that National Security was responsible for positioning or moving the forklift. Owens misunderstands the concept of open and obvious dangers. When someone proceeds through an unfamiliar facility in the dark, he has no right to assume that his course is clear. See Yoder v. Greenwald, 246 So. 2d 148, 150 (Fla. Dist. Ct. App. 1971). This rule is certainly as appropriate as the rule that water is an open and obvious danger, and hence no duty to warn exists even where the water conceals dangers beneath the surface. See generally Alabama Great Southern Railroad Co. v. Green, 276 Ala. 120, 159 So. 2d 823 (1964). Under these circumstances, we hold as a matter of law that National Security had no duty to warn Owens that the room was dark.'

"454 So. 2d at 1389-90.

"After carefully reviewing the record and the briefs, we cannot distinguish Owens from the present case. In Owens, the injured plaintiff attempted to walk through a dark building and was injured by a hazardous condition that, under

the circumstances, he could not anticipate. In the present case, Jackson attempted to walk through a dark building and was injured by a hazardous condition that, under the circumstances, he could not anticipate. In Owens, the condition that caused the injury (the forklift) was hazardous only because of the darkness. In the present case, the condition that caused Jackson's injury (the loading dock) was hazardous only because of the darkness. In Owens, there was evidence indicating that the injured plaintiff exercised reasonable care in attempting to walk through the dark building (by using a lighter and shuffling his feet). In the present case, there was evidence indicating that Jackson acted reasonably under the circumstances by relying on the fireman to lead him through the dark building. Contrary to Jackson's contentions, and the holding of the Court of Civil Appeals, whether a jury might find that Jackson acted reasonably in his attempt to negotiate the warehouse in total darkness is not material to the question whether Industrial Distribution owed any duty to Jackson to eliminate, or warn of, the danger posed by the unseen loading dock. Owens dealt with the initial legal duty owed by the premises owner, not with the affirmative defenses of contributory negligence and assumption of the risk. The Owens Court noted: 'Because we find that National Security did not owe a duty to warn Owens that the room was dark, we pretermitt any discussion of assumption of the risk, contributory negligence, or the statute of limitations.' 454 So. 2d at 1390. Owens was a refinement of the well-established rule that an invitor is not liable for injuries to an invitee that result from an open and obvious danger. Owens stands for the proposition that a dark, unfamiliar building that may conceal hidden hazards, much like a body of water that may conceal hazards beneath the surface, poses an open and obvious danger to an invitee, such as Jackson, who attempts to make his way through such a building. This is so even though the invitee may use due care to avoid injury, because the focus of our premises liability law is not on the care that may have been exercised by the invitee (unless contributory negligence is an issue), but on relieving

a premises owner of legal liability where an invitee knew of the danger that caused the injury or should have observed that danger through the exercise of reasonable care. See McClendon v. Mountain Top Indoor Flea Market, Inc., 601 So. 2d 957, 959 (Ala. 1992), wherein this Court, quoting Quillen v. Quillen, 388 So. 2d 985 (Ala. 1980), stated:

""Therefore, as a general rule, an invitor will not be liable for injuries to an invitee resulting from a danger which was known to the invitee or should have been observed by the invitee in the exercise of reasonable care. As stated by the Court in Lamson & Sessions Bolt Co. [v. McCarty], 234 Ala. 60, 63, 173 So. 388, 391 (1937):

""In 45 C.J. § 244, p. 837, the rule is thus stated: "The duty to keep premises safe for invitees applies only to defects or conditions which are in the nature of hidden dangers, traps, snares, pitfalls, and the like, in that they are not known to the invitee, and would not be observed by him in the exercise of ordinary care. The invitee assumes all normal or ordinary risks attendant upon the use of the premises, and the owner or occupant is under no duty to reconstruct or alter the premises so as to obviate known and obvious

dangers, nor is he liable for injury to an invitee resulting from a danger which was obvious or should have been observed in the exercise of reasonable care."

""Accord, *McRee v. Woodward Iron Co.*, 279 Ala. 88, 182 So. 2d 209 (1966); *Claybrooke v. Bently*, 260 Ala. 678, 72 So. 2d 412 (1954). The entire basis of an invitor's liability rests upon his superior knowledge of the danger which causes the invitee's injuries. *Gray v. Mobile Greyhound Park, Ltd.*, 370 So. 2d 1384 (Ala. 1979); *Tice v. Tice*, 361 So. 2d 1051 (Ala. 1978). Therefore, if that superior knowledge is lacking, as when the danger is obvious, the invitor cannot be held liable."

"'388 So. 2d at 989. See also *Restatement (Second) of Torts* § 343A(1) (1965)."

"(Emphasis added.) Compare *Furgerson v. Dresser Industries, Inc.*, 438 So. 2d 732 (Ala. 1983), and *Kingsberry Homes Corp. v. Ralston*, 285 Ala. 600, 235 So. 2d 371 (1970), which are distinguished in *Owens*. In both of those cases, there was evidence suggesting that although the particular defective conditions were obvious, the dangerous potential of those conditions was not appreciated by the injured plaintiffs. See *Young v. LaQuinta Inns, Inc.*, 682 So. 2d 402 (Ala. 1996). See, also, *Nayman v. Tracey*, 599 So. 2d 604 (Ala. 1992); and *Berness v. Regency Square Associates, Ltd.*, 514 So. 2d 1346 (Ala. 1987), holding that *Owens* is not controlling in the landlord-tenant context where there are factual questions

surrounding a landlord's duty to light and maintain 'common' areas."

Industrial Distribution, 709 So. 2d at 18-21 (footnote omitted). Thus, this Court reversed the Court of Civil Appeals' judgment as to Jackson's negligence claim.

Subsequently, in Ex parte Kraatz, 775 So. 2d 801 (Ala. 2000), Balinda Gale Kraatz sued Bill Benton d/b/a Benton Food Mart for injuries she suffered after falling in a parking lot at a Benton Food Mart ("the Food Mart") in Mobile County. In that case, Kraatz and her daughter were passengers in a vehicle that had stopped for gasoline at the Food Mart. Kraatz and her daughter went inside the store. While they were inside, the driver of the vehicle pulled to the side of the building to check the air pressure in one of the vehicle's tires. After Kraatz and her daughter exited the building, Kraatz stepped off the sidewalk because she saw water on the sidewalk. After taking two or three steps across the driving and parking surface, Kraatz fell and sustained injuries.

"The driver returned to the Food Mart the next day, saw a black, 'ragged' speed bump, and saw blood from Kraatz on the speed bump. The speed bump was not painted or marked in any way and was not visible at night from the path Kraatz was walking. The air compressor where the driver had been checking the tire was located near the place where Kraatz fell. In her deposition, Kraatz testified that the area where she

stepped off the curb had no lights, except those at the bank next door, and some light from the front of the store. She stated that the area was dim. Bill Benton, the premises owner, acknowledged that the speed bump had not been painted or marked in any way."

Ex parte Kraatz, 775 So. 2d at 803.

Kraatz sued Benton, asserting claims of negligence and wantonness. Benton filed a motion for a summary judgment, which the trial court granted "on the rationale that Kraatz 'walked away from the store-gas pump area with knowledge of the presence of water and into an area where she could not see where she was walking and at that point she slipped and fell.'" 775 So. 2d at 803. The Court of Civil Appeals affirmed the trial court's judgment, without an opinion, but with a citation to Owens. Kraatz v. Benton Food Mart, 757 So. 2d 491 (Ala. Civ. App. 1998) (table). This Court granted Kraatz's petition for certiorari review of the Court of Civil Appeals' decision.

In Kraatz, this Court stated, in pertinent part:

"Benton relies on two total-darkness warehouse cases which are importantly distinguishable from the case before us: Owens[v. National Security of Alabama, Inc.], 454 So. 2d [1387,] 1390 [(Ala. 1984)] ('The condition of total darkness is sufficient to put reasonable people on notice of a substantial risk of concealed hazards.' (Emphasis added.)); and Ex parte Industrial Distribution Services Warehouse, Inc., 709 So. 2d 16, 19 (Ala. 1997) ('Total darkness, possibly concealing an

unseen and unknown hazard, presents an open and obvious danger to someone proceeding through unfamiliar surroundings, as a matter of law.' (Emphasis added.)). Each of the plaintiffs in Owens and Ex parte Industrial Distribution Services Warehouse, supra, assumed a risk by walking inside a dark commercial warehouse under abnormal conditions. In haste and through expediency, Owens walked through the dark warehouse from an entrance where no light switch was available instead of going around to an entrance where he knew a light switch was available; and consequently, he tipped over 'the blade of a parked forklift.' Owens, 454 So. 2d at 1389. Jackson, the plaintiff in Ex parte Industrial Distribution Services Warehouse, supra, commercially undertook an emergency project in a darkened, flooded, storm-ravaged warehouse, where he fell off a loading dock.

"Several salient features distinguish the Kraatz case before us from Owens and Ex parte Industrial Distribution Warehouse, supra. First, Kraatz was walking in dim light, not total darkness. Partial or poor light, like that in the case before us, could mislead a reasonably prudent person into thinking that he or she would be able to see and to avoid any hazards. The variable factors which make openness-and-obviousness under partial or poor light conditions a fact question not appropriate for resolution by summary judgment are direction, level, color, diffusion, shadows, and like qualities of light, as well as the other physical features of the scene. See, e.g., Woodward[v. Health Care Auth. of the City of Huntsville, 727 So. 2d 814 (Ala. Civ. App. 1998)].

"Second, Kraatz was walking in the light conditions which Benton provided and expected his customers to use in walking where she fell. The light conditions were not abnormal for the time or place so as to alert Kraatz or any other invitee to a need to forgo walking there. Third, Kraatz was walking on a surface Benton provided and expected his customers to use. She had no reason to expect or to suspect

an obstruction in her path. Indeed, what would have been open and obvious to Benton's customers was that the premises owner had provided both the light conditions and the surface conditions for them to use for walking, just as Kraatz was using them when she tripped and fell.

"In the case before us, the issues of whether Benton breached his duty to Kraatz and whether Kraatz committed contributory negligence or assumed the risk are questions for the finder of fact. Spence v. Southern Pine Elec. Coop., 643 So. 2d 970 (Ala. 1994), and Bogue v. R & M Grocery, 553 So. 2d 545 (Ala. 1989). Therefore, the trial court erred in entering a summary judgment in favor of Benton. Thus the judgment of the Court of Civil Appeals is reversed and the cause is remanded for that court to order further proceedings."

Ex parte Kraatz, 775 So. 2d at 804.

On appeal, Joseph argues that the danger in this case was not open and obvious as a matter of law because, she says, there is a genuine dispute regarding the level of light in the area where she fell.

In support of its motion for a summary judgment, Caritas offered excerpts from the depositions of Goldfon and Joseph. Goldfon stated that it was "pitch black" and that he could not see anything outside the Caritas building. He further testified that people who were leaving were using the flashlights on their cellular telephones to get to their vehicles. Goldfon stated that he had seen the loading dock when he parked his car during daylight, but he had not told Joseph about it. He also testified

that he knew that Joseph had fallen, but it took him "a good 30 seconds" to find her in the dark.

In her deposition, Joseph testified that she walked out of the door and fell. Joseph testified that, when she went out the door, "[i]t was very dark" and that there were not any lights except for the taillights at the end of the driveway. Subsequently the following occurred:

"[COUNSEL FOR CARITAS:] So when you walked out, could you see where you were going?

"[JOSEPH:] Well, I thought I could.

"[COUNSEL FOR CARITAS:] Okay. You said it was dark?

"[JOSEPH:] Uh-huh.

"[COUNSEL FOR CARITAS:] Could you see the ground?

"[JOSEPH:] A little -- I could see my hand in front of me.

"[COUNSEL FOR CARITAS:] Okay. Could you --

"[JOSEPH:] But I could not tell anything else really.

"[COUNSEL FOR CARITAS:] Okay.

"[JOSEPH:] It just looked like concrete to me.

"[COUNSEL FOR CARITAS:] Okay. Could you -- could you actually see the concrete ground as you -- let me ask you

this, when you came out the door, was there concrete outside the door?

"[JOSEPH:] Yes.

"[COUNSEL FOR CARITAS:] Could you see the concrete?

"[JOSEPH:] I didn't look down at the concrete."

Joseph further testified that she thought that there should have been lights and that lights would have changed things drastically. Subsequently, the following occurred:

"[COUNSEL FOR CARITAS:] How would the lights have changed things?

"[JOSEPH:] You could see where you were.

"[COUNSEL FOR CARITAS:] Were you not able to see where you were going that night?

"[JOSEPH:] I could not see -- I couldn't tell that was a loading dock. I certainly wouldn't have walked off of it.

"[COUNSEL FOR CARITAS:] So was it so dark that you couldn't see what was happening?

"[JOSEPH:] Concrete looks like concrete.

"[COUNSEL FOR CARITAS:] Yeah. But my question is not that -- was it so dark you --

"[JOSEPH:] I don't know.

"[COUNSEL FOR CARITAS:] You don't know one way or the other?

"[JOSEPH:] I don't know how to answer that question. All I can tell you is the honest to God truth, I opened the door, it was dark, and I walked off the loading dock.

"[COUNSEL FOR CARITAS:] Was it so dark that you couldn't see where you were --

"[JOSEPH:] I could see my hand in front of me.

"[COUNSEL FOR JOSEPH:] Let him finish his question.

"[JOSEPH:] I don't understand what you're saying.

"[COUNSEL FOR CARITAS:] Was it so dark that you couldn't see the ground in front of you?

"[JOSEPH:] I could see right in front of my feet.

"[COUNSEL FOR CARITAS:] Okay. Were you looking at your feet when you were walking?

"[JOSEPH:] When I glanced down and I looked all around.

" [COUNSEL FOR CARITAS:] Was it so dark you could not see the wall? Is that the reason you didn't see it?

"[JOSEPH:] I think -- I think it not being lit up made it where I had a bad accident.

"[COUNSEL FOR CARITAS:] And that's what I'm trying to get to. [Your] claim against Caritas is, it was so dark you couldn't see where you were going, correct?

"[JOSEPH:] Pretty dark, yeah. It was pretty dark, yeah.

"....

"[COUNSEL FOR CARITAS:] And it's your testimony that there is no light out there behind that building?

"[JOSEPH:] No, sir. There was not.

"[COUNSEL FOR CARITAS:] And there was -- the taillights were so far away that they didn't shed any light on where you were coming?

"[JOSEPH:] No, sir. There was a little bit of moonlight. There was no -- no.

"[COUNSEL FOR CARITAS:] Okay. But it was so pitch black in that area?

"[JOSEPH:] Yes, sir."

Unlike the plaintiffs in Owens v. National Security of Alabama, Inc., 454 So. 2d 1387 (Ala. 1984), and Industrial Distribution, who were walking inside unlighted buildings, Joseph was walking outside when she fell. It is undisputed that there was no exterior lighting at the area where Joseph exited the building. Joseph characterized the area as "very dark" or "pretty dark" and, at one point, agreed that it was "pitch black." However, Joseph also testified that there was "a little bit of moonlight" at the time. She also testified that, when she walked outside, she thought

she could see where she was going, that she could see her hand in front of her, and that she could see immediately in front of her feet. Additionally, during her deposition, Erin Colafrancesco was shown photographs of the building. She testified that the reception would have been "[o]n the third floor where these windows are" and that "[t]his is a foyer and the hall is just beyond that foyer." Some of the photographs showed windows that faced in the direction of the loading-dock area. Additionally, Joseph exited the building through the exit she had been directed to use by a member of Caritas. As was the case in Ex parte Kraatz, at the time of her fall, Joseph was walking in the light conditions that had been provided by Caritas and in the area Caritas had expected her to use. Therefore, Joseph presented substantial evidence to create a question of fact as to whether this case involved "total darkness" that would constitute an open and obvious danger or a whether this case involved "partial or poor light" that "could mislead a reasonably prudent person into thinking that he or she would be able to see and to avoid any hazards." Ex parte Kraatz, 775 So. 2d at 804. Accordingly, the trial court

erroneously entered a summary judgment in Caritas's favor as to Joseph's negligence claim.³

Conclusion

For the above-stated reasons, we reverse the trial court's summary judgment in favor of Caritas as to Joseph's negligence claim and remand this case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Stewart, C.J., and Mendheim, Cook, McCool, and Parker, JJ., concur.

Shaw, J., dissents.

Sellers, J., dissents, with opinion.

³Based on our holding in this regard, we pretermitt the remaining arguments raised by Joseph.

SELLERS, Justice (dissenting).

I respectfully dissent. I would affirm the Shelby Circuit Court's summary judgment in favor of Caritas of Birmingham. Assuming that Sela Joseph was a business invitee, even when viewing the evidence in the light most favorable to her, she did not present substantial evidence to create a question of fact as to whether this case involved "total darkness" that would constitute an open and obvious danger or whether this case involved "partial or poor light" that "could mislead a reasonably prudent person into thinking that he or she would be able to see and to avoid any hazards." Ex parte Kraatz, 775 So. 2d 801, 804 (Ala. 2000).

As the main opinion notes, "[t]otal darkness, possibly concealing an unseen and unknown hazard, presents an open and obvious danger to someone proceeding through unfamiliar surroundings, as a matter of law." Ex parte Industrial Distrib. Servs. Warehouse, Inc., 709 So. 2d 16, 19 (Ala. 1997) (citing Owens v. National Sec. of Alabama, Inc., 454 So. 2d 1387 (Ala. 1984)). Legally, then when a danger, like total darkness, is open and obvious, liability for negligence cannot be imposed on a property owner by its invitee. In her deposition, Joseph described the area where the fall occurred as "very dark" and "pitch black." Joseph was later asked

whether "[the area] was so dark [that] [she] couldn't see where [she] [was] going; fair enough?" Joseph replied "yeah." Joseph also testified that light from the reception building as well as a nearby parked car's taillights were not illuminating the loading-dock area. Notably, Joseph never offered any testimony that proved that she had seen the loading dock before she stepped into it. Based on these facts, it seems clear that total darkness existed. Although Joseph testified that there was a "little bit of moonlight," Joseph's description of the darkness included this measly lighting, so taking her testimony as a whole and considering her experience at the loading dock, the trial court properly concluded that this was a case of total darkness. That conclusion was based on unrefuted facts and, as a matter of law, a summary judgment was mandated, absolving the property owner from liability.

Similar to other "step-in-the-dark cases," this case involves a plaintiff walking in the dark and being injured by an unanticipated hazardous condition that would not have been hazardous but for the darkness. See, e.g., Owens 454 So. 2d at 1387; Industrial Distribution, 709 So. 2d at 20. Therefore, because "total darkness" was present, Caritas

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owed no duty to Joseph; thus, the trial court properly entered the summary judgment in its favor.