STATE OF MICHIGAN

COURT OF APPEALS

TAYLOR M. CONATY, minor, by her next friend JAMIE WALKER, a/k/a JAMIE ALBRIGHT, and JAMIE ALBRIGHT, individually,

Plaintiffs-Appellants,

v

JEAN PIOTROWICZ, JOHN R. PIOTROWICZ, and GARY CONATY,

Defendants-Appellees,

and

JAMES A. PIOTROWICZ, BARBARA S. NORTON, and PATRICIA CASTELEIN,

Defendants.

UNPUBLISHED
December 20, 1996

No. 182952
LC No. 94-076758-NO

Before: MacKenzie, P.J., and Jansen and T.R. Thomas,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from a February 2, 1995, order of the Ingham Circuit Court granting summary disposition in favor of defendant Jean Piotrowicz. Plaintiffs also appeal from orders of January 24 and 30, 1994, granting summary disposition in favor of defendants Gary Conaty and John Piotrowicz respectively. We affirm.

This case involves injuries sustained by Taylor Conaty on June 27, 1993, when she fell into a lake located on property owned by John Piotrowicz (Gary Conaty's stepfather) and Jean Piotrowicz (Gary Conaty's sister). Taylor was two years old at the time of the incident and Gary is her father. Taylor fell into the lake and remained submerged in the water for approximately five minutes when she became caught between a pontoon boat and the dock where the boat was moored. Gary, John, and

* Circuit judge, sitting on the Court of Appeals by assignment.

Jean all acknowledged that they were present at the time of the incident. Jamie Albright is Taylor's mother, but Jamie and Gary have never been married.

Following the accident, plaintiffs filed suit for medical expenses in excess of $255,949.02, claiming that defendants breached their duty to keep Taylor safe. The trial court granted summary disposition in favor of Gary Conaty, finding that he was immune under the doctrine of intra-family tort immunity because the alleged negligent act involved the exercise of parental supervision over the child. The trial court also granted summary disposition in favor of John and Jean Piotrowicz, ruling that they had no duty under the circumstances to supervise Taylor.

I

A

First, we turn to the claim against Gary Conaty. The trial court granted summary disposition in favor of Gary, Taylor's father, under the intra-family immunity doctrine.

In *Plumley v Klein*, 388 Mich 1, 8; 199 NW2d 169 (1972), our Supreme Court abrogated intra-family tort immunity, with two exceptions: (1) where the alleged negligent act involves an exercise of reasonable parental authority over the child; and (2) where the alleged negligent act involves an exercise of reasonable parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care. This case essentially involves a claim of negligent supervision, which would fall under the first *Plumley* exception. *Ashley v Bronson*, 189 Mich App 498, 502; 473 NW2d 757 (1991).

Gary Conaty testified at his deposition that he walked out of the back door of the house to say goodbye to his relatives who were in the backyard. Gary was asked to help move a jet ski, and he believed that Taylor was walking with him as he was moving the jet ski. While moving the jet ski with John, Gary turned and noticed that Taylor was missing. They began looking for Taylor, who was found submerged in the water between the pontoon boat and the dock. Gary did not see Taylor fall into the water.

Under these circumstances, we agree with the trial court that this is a case of alleged negligent supervision by a parent. Such a claim falls under the first exception set forth in *Plumley*. That is, the alleged negligent act involves the exercise of reasonable parental authority over the child. Accordingly, plaintiffs' claim against Gary Conaty is barred by the doctrine of intra-family tort immunity.

B

Next, plaintiffs argue that even if the doctrine of intra-family immunity applies, it should not apply to plaintiff Jamie Albright's claim against Gary Conaty because they are not related. The trial court ruled that Jamie's claim was derivative, subject to the doctrine of intra-family tort immunity.

We agree with the trial court's ruling in this regard. Jamie's "claim" is wholly derivative of Taylor's injuries. Even if Jamie is legally obligated to pay Taylor's medical expenses, she has asserted no independent tort claim of her own against Gary Conaty. Because plaintiffs did not plead any independent tort claim against Gary Conaty, the trial court did not err in granting summary disposition in favor of Gary Conaty as to plaintiff Jamie Albright.

II

We now turn to plaintiffs' claims against John and Jean Piotrowicz. The trial court ruled that John and Jean Piotrowicz, as the possessors of the land, had no duty under the circumstances to supervise Taylor. The trial court also determined that Taylor was not an invitee, and that the attractive nuisance doctrine did not apply. We agree with the trial court's rulings.

A

Plaintiffs first argue that John and Jean assumed a duty to supervise Taylor, and that Jean abandoned that duty and did not arrange for any alternate supervision. Plaintiffs correctly state that a duty will be imposed where a defendant voluntarily assumes a function that she was under no legal obligation to assume. *Baker v Arbor Drugs*, 215 Mich App 198, 205; 544 NW2d 727 (1996). However, the evidence of this case does not show that defendants voluntarily assumed to supervise Taylor.

According to Jean's deposition testimony, she helped John lift the jet ski above the seawell. The jet ski was then moved onto the lawn to dry. Taylor was on the pontoon boat with Jean at that point. Jean stated that when she last saw Taylor, Taylor was on the pontoon boat. Jean then went into the house to get a vacuum to clean off the deck of the pontoon. However, Jean testified that as she was walking up the sidewalk to retrieve the vacuum, she heard Taylor talking to Gary and John on the grass. She did not actually see Taylor, however, on the grass. Jean returned with the vacuum, and vacuumed the boat for about five minutes. When Jean returned with the vacuum, Taylor was not on the boat. Jean did not remember ever seeing Taylor leave the pontoon, and she did not know how Taylor ended up in the water. Before Taylor was found in the water, Jean last saw her on the pontoon (before retrieving the vacuum), approximately ten to fifteen minutes before Taylor was found.

Although the circumstances surrounding the fall are sketchy because none of the adults actually saw Taylor fall, there is no indication that Jean or John voluntarily assumed a duty to supervise Taylor. Taylor was with her father at the time, and any duty to supervise her was with her father. Accordingly, we find that the trial court did not err in ruling that the possessors of the land, Jean and John Piotrowicz, did not owe a duty to supervise Taylor under the circumstances presented.

B

Plaintiffs also claim that the trial court erred in dismissing their claim of premises liability. We disagree.

First, we agree with the trial court that Taylor was a licensee on defendants' property. The duty a possessor of land owes to those who come upon the land depends on the status of the visitor. *Stanley v Town Square Cooperative,* 203 Mich App 143, 146; 512 NW2d 51 (1993). Invitees and licensees are two groups of persons who may be present on the land. The distinction between these two groups is critical because it defines the scope of the duty owed to the person on the land by the landowner. The distinguishing characteristic between a licensee and an invitee depends on the presence on the land and is related to the pecuniary interests of the possessor of the land. *Id.,* p 147.

If the person's use of the land is related to the pecuniary interests of the landowner, then that person is an invitee. *Id.* That is, an invitee is a person who enters the premises at the owner's express or implied invitation to conduct business concerning the owner. *Butler v Ramco-Gershenson, Inc,* 214 Mich App 521, 524; 542 NW2d 912 (1995). However, if the person is a social guest, and not on the property for the pecuniary interests of the landowner, then that person is a licensee. *Preston v Sleziak,* 383 Mich 442, 451-452; 175 NW2d 759 (1970).

In this case, there is no question that Taylor was a licensee, or a social guest. Gary took his daughter to a summer home owned by his relatives. Neither Taylor nor Gary were on the property for the pecuniary interests of defendants. Therefore, the trial court did not err in ruling that Taylor was a licensee. Because Taylor was a social guest, the scope of the duty owed to a child social guest (a licensee) is to exercise reasonable or ordinary care to prevent injury to the child. *Klimek v Drzewiecki,* 135 Mich App 115, 120; 352 NW2d 361 (1984).

In *Bradford v Feeback,* 149 Mich App 67, 71-72; 385 NW2d 729 (1986), this Court held that, as a matter of public policy, property owners should not be charged with the duty of supervising and controlling children of guests who have been invited on their property. Thus, we must reject plaintiffs' claim that John and Jean Piotrowicz had a duty to supervise or control Taylor, especially since she was with her father before she fell into the lake. There is simply no duty, under either a negligence or premises liability claim, on behalf of defendants to supervise Taylor. Because defendants did not owe a duty to supervise Taylor, summary disposition was properly granted to defendants Jean and John Piotrowicz as a matter of law.

C

Last, plaintiffs argue that the trial court erred in dismissing their attractive nuisance claim against Jean and John Piotrowicz. They contend that the pontoon boat and the dock constituted an attractive nuisance.

Attractive nuisance law is essentially negligence law. *Byrne v Schneider's Iron, Inc,* 190 Mich App 176, 182; 475 NW2d 854 (1991). Attractive nuisance law places an affirmative duty on landowners to carry on activities involving a risk of death or serious bodily harm with reasonable care for the safety of known trespassing children. *Id.* The doctrine of attractive nuisance appears to apply only with respect to known *trespassing* children on the landowner's property. See *Rand v Knapp Shoe Stores,* 178 Mich App 735, 740-741; 444 NW2d 156 (1989). Here, it cannot be disputed that

Taylor was not a trespasser on defendants' land. Moreover, liability under this doctrine is imposed only where the injury is caused by an artificial condition. *Id.*, p 741. Taylor's injuries were caused by being submerged in the lake, and not by the boat or deck. Therefore, the lake, not being an artificial condition, cannot constitute an attractive nuisance.

The trial court did not err in granting summary disposition to John and Jean Piotrowicz on the attractive nuisance claim.

Accordingly, for the foregoing reasons, we conclude that the trial court did not err in granting summary disposition to the defendants involved in this appeal.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas