

STATE OF MICHIGAN
COURT OF APPEALS

HARRY MEDARIS,

Plaintiff-Appellant,

and

STATE OF MICHIGAN, DEPARTMENT OF
SOCIAL SERVICES,

Intervening Plaintiff,

v

DRAYTON PRINTING AND COPY CENTER,
HARRY ARSHI, Individually and d/b/a DRAYTON
PRINTING AND COPY CENTER, THE DRY
DOCK, JANICE TURPIN, Individually and d/b/a
THE DRY DOCK,

Defendants-Appellees,

and

GEORGE and THOMAS SMITH,

Defendants.

UNPUBLISHED
March 13, 1998

No. 200634
Oakland Circuit Court
LC No. 96-511448-NO

Before: Gage, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition in favor of defendants Drayton Printing and Copy Center, Harry Arshi, The Dry Dock, and Janice Turpin.¹ We affirm.

On the day of his injury, plaintiff walked into The Dry Dock, an Alcoholics Anonymous social club of which plaintiff was a member. The club was located in a strip mall owned by Harry Arshi. Plaintiff noticed an individual who had been hired to complete renovations working in the club and offered his assistance as he had done on several previous occasions. While plaintiff was descending a stepladder holding a drill in one hand, he fell and seriously injured himself. Plaintiff filed a complaint, alleging that defendants breached their duty to plaintiff as a business invitee to maintain their premises, property, and tools in good repair and in a safe condition. Specifically, he alleged that the stepladder from which he fell was defective.

The defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). We note that the circuit court did not specify which subrule provided the ground for its grant of summary disposition to defendants. However, because the parties submitted documentary evidence with their motions and relied on matters outside the pleadings in their arguments, we assume that summary disposition was granted pursuant to MCR 2.116(C)(10). See *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 524; 542 NW2d 912 (1995). This Court reviews the grant or denial of a motion for summary disposition de novo. *International Brotherhood of Electrical Workers, Local Union No 58 v McNulty*, 214 Mich App 437, 442; 543 NW2d 25 (1995). A motion pursuant to MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Anderson v Wiegand*, 223 Mich App 549, 553; 567 NW2d 452 (1997). The court must give the benefit of reasonable doubt to the nonmoving party in determining whether a genuine issue of material fact exists. *Id.* The party opposing the motion must show that a genuine issue of disputed fact exists. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994).

Plaintiff now argues that summary disposition was improper because he presented sufficient evidence to establish each element of his negligence claim. We disagree. To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to plaintiff; (2) a breach of the duty; (3) causation; and (4) damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993).

Plaintiff asserts that at the time of his injury he was a business invitee. The duty that an owner or occupier of land owes to a visitor depends on the status of the visitor at the time of the injury. *Stanley v Town Square Cooperative*, 203 Mich App 143, 146-147; 512 NW2d 51 (1993). A premises owner is required to maintain his or her property in a reasonably safe condition and has the duty to exercise due care to protect invitees from conditions that might result in injury. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263-264; 532 NW2d 882 (1995). A premises owner must inspect the premises to discover possible defects. *Butler, supra* at 535. An inductor must warn only of hidden or latent defects of which the owner knows or ought to know and of which the invitee is not aware. *Id.* There is no duty to warn of open and obvious dangers unless the inductor anticipates harm to the invitee despite the invitee's knowledge of the defect. *Eason, supra* at 263-264. The care required extends to instrumentalities on the premises that the invitee uses at the invitation of the premises owner. *Id.* at 264; *Muylaert v Erickson*, 16 Mich App 167, 168; 167 NW2d 823 (1969). The existence of a legal duty is a question of law for the court to decide. *Anderson, supra* at 554.

Invitors may be held liable for an invitee's injuries that result from a failure to warn of a hazardous condition or from the negligent maintenance of the premises or defects in the physical structure. *Butler, supra* at 535. Assuming for the sake of this discussion that the duty defendants owed to plaintiff was that of a business invitee, plaintiff must still establish that defendants committed a breach of that duty, and that the breach was the cause of his injuries. The proofs presented to the circuit court by plaintiff did not establish that the ladder was defective or that its condition caused plaintiff's fall. While plaintiff offered unsworn statements by witnesses that the ladder was in a state of disrepair, assertions by these individuals were insufficient to support a claim of defect. Plaintiff's own deposition testimony revealed that he was unaware of how the accident occurred. Plaintiff assumed that the ladder collapsed out from under him. However, plaintiff failed to inspect the ladder, either before or after his fall. No evidence was presented to establish that the ladder broke, or that it collapsed to the floor, or that the ladder failed to function normally. To the contrary, evidence was presented to establish that the ladder remained standing after plaintiff's fall. Plaintiff's deposition testimony indicates that the ladder was stable immediately before the accident. One witness to the accident stated that plaintiff either missed a step as he was descending the ladder or tried to descend on the wrong side of the ladder. Accordingly, we find that plaintiff failed to raise questions of fact concerning whether defendants provided a dangerous stepladder for work on their premises and whether the stepladder's condition caused his injury.

Plaintiff also argues that he provided sufficient circumstantial evidence to establish the existence of a defect in the stepladder. A defect may be proven by circumstantial evidence. *Holdsworth v Nash Mfg, Inc*, 161 Mich App 139, 148; 409 NW2d 764 (1987). The test is whether the evidence removes the case from the realm of conjecture and supports legitimate inferences from established facts. *Weisenberg v Village of Beulah*, 352 Mich 172, 183; 89 NW2d 490 (1958). Circumstantial proof must facilitate reasonable inferences of causation, not mere speculation. *Skinner, supra* at 164-165. Viewing the evidence in the present case in a light most favorable to plaintiff, no evidence has been offered to take the question of the existence of a defect on the stepladder out of the realm of conjecture. Accordingly, because plaintiff has not raised a question of fact as to the defect of the ladder, defendants' breach of a duty, or whether defendants caused his injury, the circuit court did not err in granting summary disposition.

Because we affirm the circuit court's grant of summary disposition to defendants based on plaintiff's inability to establish that the ladder was defective, we have no need to consider plaintiff's remaining issues, which address the alternative defense theories that the ladder was a simple tool and that plaintiff's status was that of a mere volunteer.

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

¹ In his complaint, plaintiff incorrectly alleged that The Dry Dock was run by “George” (surname unknown) and Thomas Smith, as well as Janice Turpin.

The Michigan Department of Social Services, which had paid for plaintiff’s medical expenses through its Medicaid program, intervened seeking subrogation of plaintiff’s right to collect medical expenses.

Prior to the grant of summary disposition, defendants Harry Arshi and Drayton Printing and Copy Center cross-claimed defendants Janice Turpin and The Dry Dock, seeking contribution and/or indemnification. In response, defendants Turpin and The Dry Dock filed their own cross complaint against Arshi and Drayton Printing and Copy Center seeking indemnification and contribution. The circuit court’s grant of summary disposition to these four defendants also included dismissal of all cross-claims.