

STATE OF MICHIGAN
COURT OF APPEALS

AUDREY KENDRICK,

Plaintiff-Appellant,

v

BIG BEAVER LIMITED PARTNERSHIP and
JACK CHRISTENSON RELOCATION GROUP,
INC.,

Defendants-Appellees.

UNPUBLISHED

November 26, 2002

No. 237654

Oakland Circuit Court

LC No. 00-027923-NO

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 11, 1998 plaintiff went to a commercial building owned by defendant Big Beaver Limited Partnership and occupied in part by defendant Jack Christenson Relocation Group, Inc., (JCRGI) in order to have lunch with a friend. Plaintiff's friend had requested that plaintiff come to the building. Approximately one inch of snow was on the ground, and light snow was falling at the time. The parking lot of the building had not been cleared of snow. Plaintiff parked in the lot and entered the building without incident. As she was returning to her car after lunch she slipped in the lot and fell to the ground, sustaining injuries.

Plaintiff filed suit alleging that she was on defendants' premises as a business invitee, and that defendants breached their duty to maintain the parking lot in a reasonably safe condition. Defendants filed a joint motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that because the purpose of plaintiff's visit to the premises was purely social she was a licensee rather than an invitee, that under the natural accumulation doctrine they had no duty to remove the accumulation of snow from the parking lot, and that the cause of plaintiff's fall could not be determined without engaging in conjecture. In addition, defendants asserted that because JCRGI did not own or control the premises, it could not be held liable for any dangerous condition on the land.

The trial court granted defendants' motion, finding the evidence showed that plaintiff was a licensee rather than an invitee, and that plaintiff's own testimony established that the cause of

her fall was unknown, and could only be attributed to the presence of snow by speculation. The trial court did not address defendants' assertion that JCRGI could not be held liable for any dangerous condition on the land.¹

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

A landowner's duty to a visitor depends on the visitor's status. A licensee is a person who is privileged to enter upon the land of another with the owner's consent. A social guest is a licensee. A landowner owes a licensee a duty to warn of hidden dangers of which the owner knows or has reason to know if the licensee does not know or have reason to know of the dangers. A landowner does not owe a licensee a duty to inspect the premises or to make the premises safe for the licensee. An invitee is a person who enters upon the land of another pursuant to an invitation that carries an implied representation that reasonable care has been used to make the premises safe for the invitee. A landowner must warn an invitee of known dangers. A landowner is liable for physical harm caused to an invitee by a condition on the land if the owner knew or by the exercise of reasonable care would have known of the condition, should have expected that the invitee would not discover the condition, and failed to take reasonable care to protect the invitee against the condition.

To establish invitee status a party must show that the premises on which the injury occurred were held open for commercial purposes, and that the person's presence served the landowner's pecuniary interests. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 604-605; 614 NW2d 88 (2000). If reasonable minds can disagree as to the purpose for a person's presence on the land of another, the person's status is a question of fact. *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993).

As a general rule, and absent special circumstances, the hazards presented by ice and snow are open and obvious, and do not impose a duty on the property owner to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002).

Plaintiff argues the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm the trial court's ultimate decision, notwithstanding our conclusion that the trial court erred in finding the cause of plaintiff's fall could not be determined

¹ The trial court's opinion indicates that the court considered documentary evidence, including plaintiff's deposition, in reaching its decision. Therefore, it is reasonable to conclude that the trial court granted the motion for summary disposition pursuant to MCR 2.116(C)(10).

without engaging in impermissible speculation. The undisputed evidence showed that snow covered the parking lot when plaintiff entered the building, and it continued to snow during the time plaintiff was eating lunch. Plaintiff slipped and fell as she was crossing the parking lot to her car. Given this evidence, and a complete lack of evidence that the fall had another cause, such as plaintiff tripping over her own feet, etc., a jury could find without engaging in speculation that plaintiff fell due to the presence of snow in the parking lot. *Ritter, supra*.

Nevertheless, the trial court correctly granted summary disposition in favor of defendants. The undisputed evidence showed that plaintiff went to defendants' premises to have lunch with a friend. She was a social guest on the premises. Her presence did not serve defendants' pecuniary interests. The trial court did not err in concluding that reasonable minds could not disagree that plaintiff had the status of licensee rather than invitee. *Stitt, supra*. Furthermore, no evidence showed that plaintiff was unaware of the snow, or that any special circumstances existed to make the snow unreasonably dangerous in spite of its obviousness. Under the circumstances, defendants owed no duty to plaintiff to remove the snow. *Corey, supra*.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski