

STATE OF MICHIGAN
COURT OF APPEALS

WILMA TULS-GEBBEN,

Plaintiff-Appellant,

v

LaGRAVE AVENUE CHRISTIAN REFORMED
CHURCH,

Defendant-Appellee.

UNPUBLISHED

April 11, 2006

No. 259334

Kent Circuit Court

LC No. 03-011468-NI

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition for defendant in this slip and fall case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleged that she slipped and fell on a waterlogged floor mat as she was entering defendant's church for evening services. The parties agree that plaintiff was a licensee. Defendant moved for summary disposition on the ground that there was no evidence that it was aware that the mat was wet or that the mat posed any danger. The trial court agreed and granted defendant's motion.

This Court reviews a trial court's decision on a summary disposition motion de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Because it is evident that the trial court looked beyond the pleadings in making its determination, this Court will consider the motion granted pursuant to MCR 2.116(C)(10). *DeHart v Joe Lunghamer Chevrolet, Inc.*, 239 Mich App 181, 184; 607 NW2d 417 (1999). A motion under MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

Summary disposition is appropriate in a negligence action if the plaintiff is unable to establish a prima facie case of negligence. *Richardson v Michigan Humane Society*, 221 Mich App 526, 528; 561 NW2d 873 (1997). To establish a prima facie case, the plaintiff must prove "that (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the

defendant's breach of its duty was the proximate cause of the plaintiff's injuries, and (4) the plaintiff suffered damages." *Id.*

Individuals on church premises for noncommercial reasons are licensees, not invitees. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 593; 614 NW2d 88 (2000).

A "licensee" is a person who is privileged to enter the land of another by virtue of the possessor's consent. A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit. [*Id.* at 596 (citations omitted).]

Although an invitee is entitled to the highest level of protection possible, which includes an obligation to make the premises safe by inspecting and making any necessary repairs, or warning of discovered hazards, licensees assume the ordinary risks associated with their visit. *Id.* at 596-597.

We agree with the trial court that there was no genuine issue of material fact with regard to whether defendant was aware of any danger posed by the floor mat. Defendant submitted evidence showing that it had no prior knowledge that the mat was wet or could become excessively wet and slippery. Plaintiff did not come forth with any evidence to establish a genuine issue of material fact that defendant should have known about the dangerous condition of the mat. Even if the mat was slippery because water had pooled on it after it snowed, plaintiff did not present evidence to support her position that this was a hidden danger of which defendant knew or should have known about. See *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 65-66; 680 NW2d 50 (2004).

Relying on the Restatement of Torts, 2d, § 324A, plaintiff also asserts that defendant voluntarily assumed a duty to inspect the mats at the church and, therefore, it was required to perform this inspection in a nonnegligent manner. Although § 324A has been followed by this Court and the Supreme Court in the past, it is unclear whether it is still viewed as accurately reflecting the law in this state. See *Fultz v Union-Commerce Assoc*, 470 Mich 460, 464-465; 683 NW2d 587 (2004). In any event, it is apparent that plaintiff cannot establish a claim based on § 324A.

Section 324A provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if

(a) his failure to exercise reasonable care increases the risk of such harm,
or

(b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

In this case, plaintiff failed to come forth with any documentary evidence showing that defendant's maintenance and inspection of the mat increased the risk of harm to her. Nor did she show that defendant assumed a duty owed by another, or that she suffered harm because she relied on defendant to assume the responsibility for making sure the door mat was not wet. Accordingly, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio