STATE OF MICHIGAN

COURT OF APPEALS

MARCUS ARNETT and JULIE ARNETT,

Plaintiffs-Appellants,

v

BRENDA BENTON, REID MACHINERY, INC., and EDWARD G. REID,

Defendants-Appellees.

UNPUBLISHED
October 15, 1999

No. 211158
Ingham Circuit Court
LC No. 97-085594 CZ

Before: Murphy, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a trial court order granting summary disposition to defendants pursuant to MCR 2.116(C)(10) in this dog-bite case. We affirm.

Plaintiff Marcus Arnett ("Arnett") went to defendants' business premises to install automobile glass pursuant to a work order. The work order that Arnett received contained the following instruction: "MOBILE FOR FRIDAY, GARAGE AVAIL. ABOVE ADDRESS GO TO FRONT OFFICE NOT GARAGE (DOGS IN GARAGE)." When Arnett arrived at defendants' business, however, he did not see the automobiles he was supposed to service in the front parking lot so he drove to the rear of the building and asked another employee on the premises where he could find the vehicles. According to Arnett, the employee directed him to look inside the bay storage area and, if the vehicles were not there, to proceed to the front office for assistance. Arnett entered the bay storage area and when he did not find the vehicles in that area, he proceeded through the interior of the building toward the front office. While inside the building, Arnett entered an interior work area, which was the garage referred to in the work order, and he was bitten by defendants' dogs.

The trial court granted defendants' motion for summary disposition, finding that Arnett was specifically instructed to report to the front office, and that he was warned that the dogs were in the garage, yet, he nonetheless entered the building through a rear entrance and proceeded through the interior of the building. The trial court concluded that Arnett was a "near trespasser" because he exceeded the scope of his invitation onto defendants' premises.

Plaintiffs argue that the trial court erred in granting summary disposition to defendants because there were genuine issues of material fact about Arnett's legal status on defendants' property at the time he was injured. We disagree.

We review the trial court's decision to grant a motion for summary disposition under MCR 2.116(C)(10) de novo to determine whether any genuine issue of material fact exists that would preclude judgment for defendants as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). In making this determination, this Court must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence available, in a light most favorable to the nonmoving party, giving the benefit of any reasonable doubt to the nonmovant. *Id.*; *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

The dog-bite statute, MCL 287.351; MSA 12.544, provides:

> (1) If a dog bites a person, without provocation while the person is on public property, or lawfully on private property, including the property of the owner of the dog, the owner of the dog shall be liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness.

The parties do not dispute that defendants were the owners of the dogs, that Arnett did not provoke the dogs, or that he sustained injuries as a result of the dog bites. The only disputed issue is Arnett's status on the premises at the time he was injured.

An injured party must show that he was an invitee or a licensee in order to be protected by the dog-bite statute. *Alvin v Simpson*, 195 Mich App 418, 420; 491 NW2d 604 (1992). A trespasser is not entitled to recovery under this statute. An "invitee" has been defined as follows:

> (1) An invitee is either a public invitee or a business visitor.
>
> (2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.
>
> (3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land. [*Stitt v Holland Abundant Life Fellowship*, 229 Mich App 504, 506-508; 582 NW2d 849 (1998), quoting 2 Restatement Torts, 2d, § 332, p 176.]

A licensee has been defined as "a person who enters on or uses another's premises with the express or implied permission of the owner or person in control thereof. *Alvin*, *supra* at 420; *Cox v Hayes*, 34 Mich App 527, 532; 192 NW2d 68 (1971). A trespasser is defined as "a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise." 2 Restatement Torts, 2d, § 329, p 171.

Arnett was invited to defendants' business to perform automobile glass repair work on their premises, and therefore, was a business invitee for purposes of entry onto defendant's premises to perform the work. See *Stitt, supra* at 506-508. However, when Arnett ventured into the garage without permission or invitation, he exceeded the scope of his invitation and became a trespasser in that particular area. *Constantineau v DCI Food Equipment, Inc*, 195 Mich App 511, 515-516; 491 NW2d 262 (1992). Arnett's invitation onto defendants' premises, as reflected in the work order, was expressly limited to entering the building through the front office. Importantly, the work order explicitly directed him not to enter the garage. Plaintiffs have offered no evidence to rebut defendants' contention that Arnett was never given permission to enter the garage, and under these circumstances, permission cannot be implied. *Alvin, supra* at 421.

Further, even if we were to accept Arnett's argument that he was invited into the bay storage area by another employee, the employee did not direct Arnett to enter the front office through the interior of the building. Instead, the employee specifically advised Arnett that if he did not see the automobiles he was supposed to work on in the bay storage area, he should proceed to the front office for assistance. These instructions, considered in the context of a work order which unequivocally directed Arnett to enter the building through the front office door, and further advised Arnett *not* to enter the garage where the dogs were located, cause us to conclude that Arnett exceeded the scope of his invitation onto defendants' property and he became a trespasser when he entered the garage. Accordingly, Arnett is precluded from recovering for his injuries under the dog-bite statute as a matter of law, *Constantineau, supra* at 515-516, and the trial court properly granted summary disposition to defendants.

Plaintiffs next argue that even if Arnett was a trespasser on defendants' property, summary disposition was nonetheless improper because there were genuine issues of material fact as to whether defendants were negligent for keeping dangerous dogs in the building. We disagree.

In general, the law does not impose a duty on landowners to maintain their premises in a safe condition for trespassers. *Wymer v Holmes*, 429 Mich 55, 71, n 1; 412 NW2d 213 (1987); *Byrne v Schneider's Iron & Metal, Inc*, 190 Mich App 176, 183; 475 NW2d 854 (1991). Those who venture into an area without permission or invitation must accept the responsibility for any resulting injuries. *Constantinueau, supra* at 515. However, if a landowner knows or has reason to know that a trespasser is present, the landowner has a duty to use ordinary care to prevent injury to the trespasser from active negligence. *Torma v Montgomery Ward & Co*, 336 Mich 468, 476-477; 58 NW2d 149 (1953); *Blakeley v White Star Line*, 154 Mich 635, 637; 118 NW 482 (1908). Here, in light of defendants' explicit instruction to Arnett not to enter the garage and their warning to Arnett of the presence of the dogs in the garage, we reject plaintiffs' argument that defendants should have known that Arnett would enter the garage and be confronted by the dogs.

Affirmed.

/s/ William B. Murphy
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder