

STATE OF MICHIGAN
COURT OF APPEALS

MARILYN BLINDER and HYMAN BLINDER,

Plaintiffs-Appellants,

v

THREE M ENTERPRISES, d/b/a VILLAGE
KNOLL,

Defendant,

and

BORMAN'S, INC.,

Defendant-Appellee.

UNPUBLISHED

August 24, 2001

No. 223996

Oakland Circuit Court

LC No. 98-007523-NO

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from a circuit court order granting defendant Borman's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff contends that the trial court erred in dismissing her negligence claim. She asserts that the local ordinance prohibiting shopping carts in the parking lot plus defendant's

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

general policy to see that the ordinance is obeyed gave rise to a duty to maintain control of the shopping carts and the evidence presented below created a question of fact whether that duty had been breached. Plaintiff has not cited any case law or other authority in support of her assertion that defendant did in fact owe her a duty of care and thus has failed to preserve the issue for appeal. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). In any event, “violation of an ordinance, without more, will not serve as the basis for imposing a legal duty cognizable in negligence theory. Although violation of an ordinance may be evidence of negligence, this has little or no bearing upon the purely legal question whether defendant owes plaintiff a duty in the first place.” *Ward v Frank’s Nursery & Crafts, Inc*, 186 Mich App 120, 135; 463 NW2d 442 (1990) (citation omitted). Furthermore, the imposition of a legal duty on a retailer on the basis of its internal policies is contrary to public policy. *Buczowski v McKay*, 441 Mich 96, 99 n 1; 490 NW2d 330 (1992). Therefore, while the trial court erred in deciding this case on the basis of premises liability law because defendant did not own or control the parking lot, we will not reverse where the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel