

STATE OF MICHIGAN
COURT OF APPEALS

BETTY SHAW,

Plaintiff-Appellant,

v

LORD OF LORD MISSIONARY BAPTIST
CHURCH,

Defendant-Appellee.

UNPUBLISHED

July 26, 2002

No. 232423

Wayne Circuit Court

LC No. 00-008264-NO

Before: Talbot, P.J., and Cooper and D. P. Ryan*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this premises liability action. 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. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* To rule on the motion, the trial court must consider the pleadings, affidavits, depositions and all other documentary evidence submitted by the parties. MCR 2.116(G)(5). The court must view the evidence and all reasonable inferences drawn from the evidence in favor of the nonmoving party, giving the nonmoving party the benefit of any reasonable doubt. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). If there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, the court may grant summary disposition pursuant to MCR 2.116(C)(10). *Hazle, supra* at 461.

The duty owed by a landowner to a visitor depends on whether the visitor is an invitee, a licensee, or a trespasser. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). In various other jurisdictions, a volunteer worker at a church is considered an invitee. See Anno: *Liability for personal injury or death allegedly caused by defect in church premises*, 8 ALR5th 1, § 11, pp 57-62. In Michigan, however, "invitee status must be founded on a commercial purpose for visiting the owner's premises." *Stitt, supra* at 607. Such a

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

commercial purpose might be found, for example, where the plaintiff was hired to paint the church, where the plaintiff was attending a bingo game for which a fee was charged, or where the plaintiff was attending a carnival held as a fund-raiser. *Id.* at 601. A person attending a church for a religious function, such as worship, is a licensee, even if he makes a voluntary financial contribution to the church. *Id.* at 606.

Plaintiff presented no evidence that she was on defendant's premises for "an essential commercial purpose." *Id.* There was no fee to participate in the food distribution program. Moreover, plaintiff volunteered her assistance and there was no evidence that the food distribution program was other than a religious good work. Therefore, the trial court did not err in finding that plaintiff was a licensee as a matter of law.

A landowner does not have a duty of inspection or affirmative care to make the premises safe for the licensee's visit. *Id.* at 596. The landowner merely owes the licensee a duty to warn of any hidden dangers that the landowner is aware or has reason to be aware of, if the licensee does not know or have reason to know of those dangers. *Id.* Because plaintiff was admittedly aware of the box, defendant did not owe her a duty and thus was entitled to judgment.

Even if plaintiff were an invitee, defendant would still be entitled to judgment under the open and obvious doctrine. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). There is no dispute that the box plaintiff tripped over was open and obvious; she was attempting to avoid it when she fell. There were no special aspects of the condition which would serve to impose liability because the risk of tripping over a box and falling to the ground fails to present an especially high likelihood of severe harm. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 519-520; 629 NW2d 384 (2001).

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan