# STATE OF MICHIGAN

# COURT OF APPEALS

JOSEPH DUPRAS,

Plaintiff-Appellant,

v

TIM LLOYD-LEE,

Defendant-Appellee.

UNPUBLISHED
May 19, 2011

No. 295130
Marquette Circuit Court
LC No. 2008-046232-NO

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in defendant's favor. Because defendant owed no duty to plaintiff to warn him of the danger of stepping on a wet, sloped roof, we affirm.

On the morning of August 7, 2006, plaintiff arrived at defendant's (plaintiff's uncle) home to help shingle the pitched roof of defendant's garage. The shingles had been stripped from the roof prior to plaintiff's arrival and the roof was covered in only tarpaper. Plaintiff observed that the roof was wet and advised defendant of that fact. According to plaintiff, defendant asked if his shoes squeaked when he walked on the roof and plaintiff stepped onto the roof, noting that his shoes, did, in fact, squeak. Plaintiff testified that defendant, a licensed contractor, implied that the squeaking shoes indicated that it was okay to go onto the roof. Plaintiff thus continued to walk on the roof, then slipped and fell off, incurring injuries to his left leg. Plaintiff thereafter initiated the instant action against defendant.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) contending that plaintiff was a licensee and that defendant breached no duties owed to licensees. Defendant alternatively asserted that if plaintiff were deemed an invitee, the condition causing plaintiff's fall (i.e., the wet roof) was open and obvious and that defendant still did not breach a duty owed to plaintiff. The trial court granted defendant's motion, finding that in this premises liability matter, plaintiff was an invitee, and that the wet condition of the roof was open and obvious such that defendant had no duty to warn of the danger posed by the wet roof. This appeal followed.

We review de novo a trial court's ruling on a motion for summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31;

651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all of the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31.

On appeal, plaintiff first asserts that the trial court erred in determining that the action sounded solely in premises liability rather than both premises liability and a separate negligence claim. Plaintiff asserts that, at the very least, a genuine issue of fact existed as to whether defendant voluntarily undertook a separate, common law duty to give reliable advice, then breached that duty by indicating that as long as plaintiff's shoes squeaked on the roof, it was safe to walk on it. We disagree.

It is well settled that the gravamen of an action is determined by reading the complaint as a whole, looking beyond procedural labels to determine the exact nature of the claim. *Adams v Adams*, 276 Mich App 704, 711; 742 NW2d 399 (2007). Michigan law distinguishes between claims resulting from ordinary negligence and premises liability. *James v Alberts*, 464 Mich 12, 18-19; 626 NW2d 158 (2001). "In a premises liability claim, liability emanates merely from the defendant's duty as an owner, possessor, or occupier of land." *Laier v Kitchen*, 266 Mich App 482, 493; 702 NW2d 199 (2005). When an injury develops from a condition of the land, rather than from an activity or conduct that created the condition, the action sounds in premises liability. *James*, 464 Mich at 18-19. In contrast, liability with respect to an ordinary negligence claim stems from the basic rule of the common law which "imposes on every person engaged in the prosecution of any undertaking an obligation to use due care, or to so govern his actions as not to unreasonably endanger the person or property of others." *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967).

In this matter, plaintiff asserted that the condition that caused his fall was a wet, slippery roof. He contended that not only did defendant unreasonably allow the wet condition to exist on his property and fail to warn him of the condition, but that defendant also affirmatively asserted that the roof was safe to step on, despite its wet condition. No matter how plaintiff framed his claims, however, we agree with the trial court that plaintiff's action sounds in premises liability.

After plaintiff notified defendant that the roof was wet, defendant allegedly implied that so long as plaintiff's shoes squeaked on the roof, it was safe to walk on. Plaintiff then walked on the roof, and fell, due to the slippery nature of the roof. It was the roof itself, then, not defendant's conduct that caused plaintiff to fall. Although plaintiff alleges defendant implied that the roof was safe when it was not, defendant's conduct did not produce the resulting harm. Rather, it was plaintiff's action of attempting to walk on a roof he personally knew to be wet that created the harm. Because the condition of the roof created the harm, plaintiff's cause of action is one of premises liability.

In a premises liability claim, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages. *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). However, a landowner's specific duty to a visitor depends on that visitor's status as a trespasser, a licensee, or an invitee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Relevant to the instant matter,

> 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. Typically, social guests are licensees who assume the ordinary risks associated with their visit.
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> . . . An "invitee" is "a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for [the invitee's] reception." The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards. Thus, an invitee is entitled to the highest level of protection under premises liability law. *Id*. at 596-597(internal citations omitted).

In the instant matter, plaintiff was present on defendant's property to assist defendant in re-roofing his garage. Citing to *Hottmann v Hottmann*, 226 Mich App 171; 572 NW2d 259 (1997), the trial court concluded that because plaintiff was at the home to confer a benefit to defendant he was an invitee. However, in a post-*Hottman* case, our Supreme Court, noting a divergence of case law on what circumstances create invitee status and reconciled them as follows:

> [W]e conclude that the imposition of additional expense and effort by the landowner, requiring the landowner to inspect the premises and make them safe for visitors, must be directly tied to the owner's commercial business interests. It is the owner's desire to foster a commercial advantage by inviting persons to visit the premises that justifies imposition of a higher duty. In short, we conclude that the prospect of pecuniary gain is a sort of quid pro quo for the higher duty of care owed to invitees. Thus, we hold that the owner's reason for inviting persons onto the premises is the primary consideration when determining the visitor's status: In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose. *Stitt*, 462 Mich at 604 (emphasis in original).

Under *Stitt*, then, invitee is a status limited to only those present on a premises held open for a commercial purpose. There is no indication that plaintiff expected to be paid or otherwise compensated for the roofing work. Defendant's request that his nephew, plaintiff, assist him in re-shingling his roof cannot be considered an opening of defendants' premises for a commercial purpose so as to raise plaintiff's legal status to that of invitee under the *Stitt* test. Plaintiff, then, was a licensee and therefore defendant owed him only a duty to warn "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." *Id*. at 596.

The danger here involved a wet, pitched roof. Plaintiff was the one who initially noted that the roof was wet, such that the danger was not hidden. And, common knowledge suggests

that most surfaces, when wet, can become slippery. Moreover, though plaintiff indicates that he was inexperienced with roofs and was not aware of the danger posed by a wet roof, his own testimony suggests that defendant also did not believe the roof to be dangerous. According to plaintiff, defendant implied that if his shoes squeaked on the roof, it was safe. When plaintiff tested his shoes on the roof and found that they squeaked, he continued walking on the roof. Thus, not only was there no danger hidden to plaintiff, there was no hidden danger known by defendant.

Even if plaintiff were an invitee, we agree with the trial court that the danger posed by the wet roof was open and obvious with no special aspects, such that defendant had no duty to warn plaintiff of or protect him from the same. See, *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). Again, plaintiff was well aware that the sloped roof was wet and was, in fact, the one who pointed it out to defendant. Summary disposition was thus appropriate whether plaintiff was a licensee or an invitee.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher