STATE OF MICHIGAN

COURT OF APPEALS

DAVID MEAD,

Plaintiff-Appellant,

v

LIFE OF PURPOSE CHRISTIAN CHURCH and BERNADETTE'S FAITH IN ACTION,

Defendants-Appellees.

UNPUBLISHED
April 14, 2025
10:25 AM

No. 368591
Macomb Circuit Court
LC No. 2022-002485-NO

DAVID MEAD,

Plaintiff-Appellant,

v

LIFE OF PURPOSE CHRISTIAN CHURCH,

Defendant-Appellee,

and

BERNADETTE'S FAITH IN ACTION,

Defendant.

No. 368593
Macomb Circuit Court
LC No. 2022-002485-NO

Before: YATES, P.J., and O'BRIEN and FEENEY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting the motion for summary disposition filed by defendant Bernadette's Faith in Action under MCR 2.116(C)(10). As part of

his appeal, plaintiff also contests the trial court's earlier order that granted the motion for summary disposition filed by defendant Life of Purpose Christian Church (LOP) under MCR 2.116(C)(10). We affirm.

Defendants are separate organizations that jointly owned a property with a church building on it. LOP uses part of the building to hold worship services twice a week, and Bernadette's uses the other part of the building to run a nonprofit charity. In the summer of 2021, Dale and Barry Brockert, the owners of Bernadette's, placed a plastic shed on the parking lot to serve as a food pantry, where members of the public could donate food and clothes as well as take food and clothes as needed, free of charge. The shed had no floor of its own, so its "floor" was the asphalt parking lot on which the shed sat. The shed was otherwise fully enclosed. Bernadette's placed a small heat lamp inside the shed in an attempt to keep the food from freezing during the winter. Bernadette's had exclusive control of the shed and food-pantry program.

On February 4, 2022, plaintiff entered the property to donate food to the food pantry. Plaintiff entered the shed and placed his food on the shelves. When plaintiff turned to leave, he slipped on a patch of ice and fell. Though plaintiff noticed snow on the ground outside of the shed, he did not notice anything on the shed floor when he entered it. No one working for Bernadette's or LOP had ever seen ice inside the shed or received complaints about ice inside the shed before plaintiff's fall. Dale went inside the shed at least every other day and never saw ice.

Plaintiff filed a premises-liability claim against defendants. Plaintiff argued that defendants violated the duty they owed plaintiff as an invitee because they knew or should have known about the ice yet failed to remove the hazard or warn plaintiff about it. LOP moved for summary disposition on the basis that plaintiff was a licensee, and LOP did not know or have reason to know about the ice inside the shed because it did not operate, maintain, oversee, or otherwise involve itself with the food pantry. The trial court granted LOP's motion, agreeing with LOP that plaintiff was a licensee and that LOP did not know or have reason to know about the ice inside the shed because LOP did not run the food pantry. Bernadette's then moved for summary disposition on the same grounds—plaintiff was a licensee, and Bernadette's did not know or have reason to know about the ice. The trial court granted Bernadette's motion, again concluding that plaintiff was a licensee, and that Bernadette's did not know or have reason to know about the ice because Dale and Barry never saw ice inside the shed.

On appeal, plaintiff challenges the trial court's orders granting defendants' motions for summary disposition. This Court "reviews de novo a trial court's ruling on a motion for summary disposition." *Zarzyski v Nigrelli*, 337 Mich App 735, 740; 976 NW2d 916 (2021). A party is entitled to summary disposition pursuant to MCR 2.116(C)(10) when the evidence does not present a genuine issue of material fact. *Jewett v Mesick Consol Sch Dist*, 332 Mich App 462, 470; 957 NW2d 377 (2020). "A genuine issue of material fact exists when the record, viewed in the light most favorable to the nonmoving party, leaves open an issue upon which reasonable minds might differ." *MacDonald v Ottawa Co*, 335 Mich App 618, 622; 967 NW2d 919 (2021) (quotation marks and citation omitted). "The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion." *Jewett*, 332 Mich App at 470 (quotation marks and citation omitted).

Plaintiff first argues that the trial court erred by determining that plaintiff was a licensee. We disagree. "In a premises liability action, 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." *Tripp v Baker*, 346 Mich App 257, 263; 12 NW3d 45 (2023) (quotation marks and citation omitted). "The duty owed to a visitor depends on whether the visitor was a trespasser, licensee, or invitee at the time of the injury." *Id*. (quotation marks and citation omitted).

All parties look to *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2000), to determine whether plaintiff was an invitee or licensee. *Stitt* held that a plaintiff must demonstrate that a landlord held the premises open to the public for a commercial purpose to show that the plaintiff was an invitee, reasoning:

> [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. [*Id*. at 604.]

The *Stitt* Court further explained that "a business purpose or a business or commercial benefit to the landowner [is] a necessary requirement in order for a visitor to be deemed an invitee." *Id*. at 605. The rule developed in *Stitt* centers the analysis on the landlord's reason for holding the premises open to the public—in the absence of a commercial purpose on behalf of the landowner, consent to enter the land will only confer licensee status. As particularly relevant here, the *Stitt* Court noted, "The solicitation of entirely voluntary donations by a nonprofit organization is plainly not a commercial activity." *Id*. at 606 n 11.

Bernadette's was a nonprofit organization that held open its premises to members of the public to take food or clothing from the pantry or leave voluntary donations of food or other items. Bernadette's did not receive a commercial advantage from the donations—members of the public could take food and clothing from the shed as needed, free of charge. It follows that, by inviting people to enter its property to donate to the pantry, Bernadette's did not open its premises for commercial activity, so plaintiff was not an invitee.

On the day of the fall, plaintiff entered the property to make a voluntary donation to the food pantry. Because Bernadette's did not open its premises to receive a commercial benefit, plaintiff was a licensee. See *id*. at 604. With respect to LOP, plaintiff was not an invitee because LOP did not hold the property open to the public beyond worship services and other related noncommercial events, which plaintiff did not enter the property to attend. Therefore, the trial court did not err by concluding that plaintiff was a licensee when he fell.

Plaintiff cites *Kendzorek v Guardian Angel Catholic Parish*, 178 Mich App 562, 568; 444 NW2d 213 (1989), overruled in part on other grounds *Orel v Uni-Rak Sales Co, Inc*, 454 Mich 564, 569; 563 NW2d 241 (1997), in support of his argument that he was an invitee. But the plaintiff in *Kendzorek* was a business invitee of the church because the church held open its land for a fundraiser, the goal of which was to raise revenue for the church. *Kendzorek*, 178 Mich App at 568. This case is distinguishable from *Kendzorek* because Bernadette's did not hold open its property to receive a commercial benefit. Rather, Bernadette's held open its premises for visitors to make voluntary donations, which does not constitute commercial activity. See *Stitt*, 462 Mich at 606 n 11. Therefore, we are unpersuaded that *Kendzorek* contradicts the conclusion that plaintiff was a licensee.

Plaintiff maintains that, if he were a licensee, then the trial court erred by determining that defendants met their duty of care with respect to plaintiff. We disagree.

This Court has explained the duty owed to licensees as follows:

> 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. [*Sanders v Perfecting Church*, 303 Mich App 1, 4-5; 840 NW2d 401 (2013) (quotation marks and citation omitted).]

Nothing in the record indicates that LOP had actual knowledge of, or reason to know about, the ice in the shed—no one complained about ice inside the shed, no one reported that they slipped on ice before plaintiff's fall, and there is no evidence that LOP had knowledge of water on the shed's floor. LOP's lack of knowledge is unsurprising given the evidence that LOP was not involved with the food pantry or shed. While LOP had a responsibility to maintain the parking lot on which the shed sat, that responsibility did not extend to the inside of the shed. Therefore, the trial court did not err by concluding there was no genuine issue of material fact that LOP did not know, and had no reason to know, about the ice inside the shed before plaintiff's fall.

Turning to Bernadette's, Dale testified that Bernadette's was responsible for maintaining the inside of the shed. Dale went inside the shed at least every other day and never saw ice inside the shed until after plaintiff's fall. Additionally, no one reported ice inside the shed before plaintiff's fall. The foregoing demonstrates that Bernadette's did not have actual knowledge of the ice before plaintiff's fall.

Bernadette's also had no reason to know about the ice before plaintiff's fall. Dale inspected the shed the day after plaintiff's fall and concluded that the ice formed after a pile of snow near the shed melted, leaked underneath the shed, and refroze overnight. The pictures of the ice corroborate Dale's explanation, and plaintiff provided no other explanation. Dale believed that the shed was level when he assembled it, and Barry found nothing amiss with the area of asphalt where they placed the shed. This demonstrated that Bernadette's did not have a reason to believe there was a gap under the sides of the shed that would allow water to pool underneath it. Additionally, Dale did not see ice inside the shed before February 5, 2022, though the shed was in

the parking lot during the preceding winter months. This also demonstrated that Bernadette's did not have reason to know ice would form inside the shed. Further, Bernadette's had a heat lamp inside the shed that made it less likely that ice would form inside the shed. Dale testified that he did not anticipate that ice could form inside the shed. No evidence in the record suggested that Bernadette's knew or had reason to know about the ice inside the shed. Therefore, we conclude there was no genuine issue of material fact that Bernadette's did not know or have reason to know about the ice inside the shed.

Affirmed.

/s/ Christopher P. Yates
/s/ Colleen A. O'Brien
/s/ Kathleen A. Feeney