

STATE OF MICHIGAN
COURT OF APPEALS

NORMA J. FEICHTINGER, Personal Representative
of the Estate of LOUIS FEICHTINGER, Deceased,

UNPUBLISHED
July 1, 1997

Plaintiff-Appellant,

v

No. 191012

Washtenaw Circuit Court
LC No. 94-001004-NP

DETROIT EDISON COMPANY, RONALD
MARKHAM and MARIANN MARKHAM,

Defendants-Appellees.

Before: Jansen, P.J., and Young and R.I. Cooper,* JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting the Markhams' motion for summary disposition.¹
We affirm.

Plaintiff's decedent died after his plane crashed on the Markhams' property in May 1991. Claiming that the utility's power lines proximately caused her decedent's crash, plaintiff alleged that the Markhams' were negligent for not warning of the power lines nor marking their landing strip as unusable. The Markhams moved for summary disposition claiming they owed no duty to plaintiff's decedent. The trial court agreed, and dismissed plaintiff's claims. Plaintiff argues on appeal that the trial court erred in finding the Markhams owed no duty to her decedent.

A trial court's decision to grant a motion for summary disposition is reviewed de novo by this Court to determine if the defendant was entitled to judgment as a matter of law. *Citizens Ins Co v Bloomfield Twp*, 209 Mich App 484, 486; 532 NW2d 183 (1995). A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). In reviewing a (C)(10) motion, a court considers pleadings, affidavits, depositions, admissions, and any evidence in favor of the nonmoving party, granting that party the

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

benefit of any reasonable doubt. *Id.* Summary disposition is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Mitchell v Dahlberg*, 215 Mich App 718, 725; 547 NW2d 74 (1996).

Plaintiff claims that the Markhams' owed a duty to her decedent as he was a licensee, not a trespasser. We disagree. It is undisputed that plaintiff's decedent attempted to land his plane on the Markhams' landing strip without their consent. Hence, he was a trespasser, i.e., one who enters upon the land of another without the owner's consent. *Wymer v Holmes*, 429 Mich 66, 71 n1; 412 NW2d 213 (1987). By contrast, a licensee is a person who enters upon the land of another with the express or implied permission of the owner. *Alvin v Simpson*, 195 Mich App 418, 420; 491 NW2d 604 (1992).

Plaintiff argues that the Markhams' permission may be implied. Implied permission can be established only with evidence that indicated the Markhams acquiesced in the known, customary use of the landing strip by the public. *Alvin, supra*, 195 Mich App 420. The Markhams intended the landing strip for their use exclusively. In a letter to the Bureau of Aeronautics, the Markhams indicated that the runway was intended for their private use only, and that "for anyone else to use [the] runway they would have to get [their] permission first." The Markhams never granted plaintiff's decedent permission to land his aircraft on their landing strip. Moreover, before the accident at issue, no stranger had ever attempted to land an aircraft on the runway.

In fact, there were no wind direction indicators or other devices on the property that implied an invitation to use the landing strip, and the Markhams' landing strip was not shown on the Michigan aeronautical chart or listed in the Michigan airport directory. Because the evidence does not establish that the Markhams acquiesced in the known, customary use of the landing strip by the public, plaintiff has not established that her decedent was a licensee. Therefore, the Markhams owed no duty to her decedent, and the trial court correctly ruled that plaintiff's decedent was a trespasser to whom the Markhams owed no duty. *Wyner, supra*, 429 Mich 71 n 1; *Preston v Sleziak*, 383 Mich 442, 447; 175 NW2d 759 (1970) (a landowner owes no duty to keep the premises safe for trespassers).

Affirmed.

/s/ Kathleen Jansen
/s/ Robert P. Young, Jr.
/s/ Richard I. Cooper

¹ Since plaintiff filed her appeal, Detroit Edison has settled with plaintiff and was dismissed from this appeal by stipulation.