STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS E. GIFFEL,

Plaintiff-Appellant,

v

ALICE LIBKA and JEREMY DONNELL a/k/a JAMIE LIBKA,

Defendants-Appellees.

UNPUBLISHED
July 7, 1998

No. 202963
Genesee Circuit Court
LC No. 96-044979-NO

Before: Jansen, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(8). We affirm.

This premises liability action arises out of plaintiff's claim that he sustained injury after falling from the roof of defendants' garage. Plaintiff alleged that he was invited to a party hosted by defendant Jeremy Donnell and his brother, who are defendant Alice Libka's two sons. During the party, plaintiff, who had consumed some alcohol, and several others allegedly took Donnell's suggestion and climbed onto the roof of defendants' one-story garage. Plaintiff allegedly fell from the roof after slipping on moss that was obscured by the branches of a large tree draping over a portion of the roof. Defendants argued that the risk of falling was open and obvious. The trial court granted summary disposition for defendants on the basis that plaintiff's complaint failed to establish that defendants owed plaintiff a legal duty. We agree.

On appeal, we review a trial court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the claim by the pleadings alone. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). We must accept all factual allegations supporting the claim as true as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* In a negligence action, summary disposition is proper under MCR 2.116(C)(8) if the court determines as a matter of law that defendant did not owe plaintiff a legal duty of care. *Eason v*

Coggins Memorial Christian Methodist Episcopal Church, 210 Mich App 261, 263; 532 NW2d 882 (1995).

An action in negligence may only be maintained if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). Generally, the court must determine as a matter of law whether a duty exists.. *Id.* at 95

Plaintiff alleged in his complaint that, as a social guest, he maintained the status of a licensee on defendants' premises. In *Wymer v Holmes*, 429 Mich 66, 71 n 1; 412 NW2d 213 (1987), our Supreme Court reaffirmed the duty owed to licensees, as follows:

> A landowner only owes a licensee a duty to warn the licensee of any hidden dangers he knows or has reason to know of, if the licensee does not know or has no reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensees' visit. [Citations omitted.]

Accord *DeBoard v Fairwood Villas Condominium Ass'n*, 193 Mich App 240, 241-242; 483 NW2d 422 (1992); *Forche v Gieseler*, 174 Mich App 588, 595; 436 NW2d 437 (1989), relying on *Preston v Sleziak*, 383 Mich 442; 175 NW2d 759 (1970); 2 Restatement Torts, 2d, § 342, p 210. A premises owner owes no duty to licensees regarding open and obvious dangers. *White v Badalamenti*, 200 Mich App 434, 437; 505 NW2d 8 (1993); *DeBoard*, *supra* at 242. In situations involving adult licensees, "'the fact that the [defective] condition is obvious is usually sufficient to appraise [the licensee], as fully as the possessor, of the full extent of the risk involved.'" *Id.* at 242-243, quoting 2 Restatement Torts, 2d, §342.

Plaintiff alleged in his complaint that the presence of moss or other slippery substances located near the garage roof and concealed by the branches of a large tree constituted a dangerous and hidden condition. Assuming that the accumulation of the moss under the tree branches was a hidden danger, plaintiff has not alleged that defendants knew or had reason to know of the presence of moss on the roof necessary to establish a duty to warn. Moreover, even if defendants knew of the allegedly dangerous condition, the dangers inherent in traversing a portion of a garage roof that is obscured by tree branches is open and obvious to a person of ordinary intelligence. See *White*, *supra* at 437, citing *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Therefore, the trial court properly granted summary disposition for defendants pursuant to MCR 2.116(C)(8).

Moreover, we are not persuaded by the cases plaintiff cites to support his assertion that summary disposition was erroneously granted. *Hottman v Hottman*, 226 Mich App 171; 572 NW2d 259 (1997); *Singerman v Municipal Service Bureau Inc*, 455 Mich 135; 565 NW2d 383 (1997). These cases deal with the open and obvious doctrine as it applies to the more stringent standard owed to invitees. See *Wymer*, *supra* at 71 n 1 (describing the higher duty owed to a business invitee).

Plaintiff also claims that the trial court prematurely granted defendants' motion pursuant to MCR 2.116(C)(8), and contends that the trial court erroneously failed to accept his well-pleaded allegations as true. By admitting that he was a licensee and failing to allege that defendants knew or had reason to know of the alleged danger, however, plaintiff clearly failed to satisfy his burden of pleading a prima facie case of negligence. Therefore, the trial court's alleged mention of facts extraneous to plaintiff's complaint was harmless. Moreover, summary disposition was not premature because the trial court granted summary disposition on the pleadings pursuant to MCR 2.116(C)(8). Therefore, further discovery would have been irrelevant.

We affirm.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Peter D. O'Connell