STATE OF MICHIGAN

COURT OF APPEALS

THEODORE NEWMAN, Next Friend of JENNIFER HILL, Minor,

Plaintiff-Appellant,

v

ABDO ZANDANI, d/b/a CLOCK SUPER LAUNDROMAT,

Defendant-Appellee.

UNPUBLISHED
September 8, 1998

No. 201828
Wayne Circuit Court
LC No. 96-614625 NO

Before: Holbrook, Jr., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of his negligence and attractive nuisance action pursuant to MCR 2.116(C)(10). We affirm in part, reverse in part and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Premises liability is conditioned upon the presence of both possession and control over the land. *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980). A person in possession and control of the land must exercise reasonable care in avoiding harm to invitees on his property from the negligent acts of third persons because he is in possession and control of the premises and in a position to exercise the power of control or expulsion. *Id*. at 554; 2 Restatement Torts, 2d, § 344, pp 223-224. This duty extends to protect invitees from "even persons outside the land whose acts endanger the safety of the visitor." Restatement, *supra*, comment b, p 224.

The documentation supplied by the parties establishes that defendant owned, occupied and controlled the property upon which his laundromat was located. It also establishes that Jennifer was injured while playing on defendant's property. Although the documentation establishes that the fence was located on an adjoining parcel of property not owned, possessed and controlled by defendant, the documentation does establish that razor wire hung from the fence over defendant's parking lot and protruded into the air space over defendant's parking lot. Additionally, the documentation indicated that the razor wire was located immediately adjacent to one of the doors used for entering and exiting

defendant's laundromat and that the wire hung below the top of this door. Viewing this documentation in a light most favorable to plaintiff, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), defendant, as possessor and controller of his business premises, had a duty to protect Jennifer from the negligent acts of third-parties, such as his neighbor, and had the power as possessor and controller of his business premises to expel the razor wire that intruded upon his property and created a dangerous condition on his premises. To the extent that the trial court determined that defendant owed no duty to plaintiff because defendant did not control the fence, the court erred.

The court correctly granted summary disposition, however, with regard to plaintiff's attractive nuisance claim. Attractive nuisance is a theory of liability imposed on a landowner for injuries sustained to trespassing children. *Ellsworth v Highland Lakes Development Associates*, 198 Mich App 55, 63; 498 NW2d 5 (1993); *Rand v Knapp Shoe Stores*, 178 Mich App 735, 740-741; 444 NW2d 156 (1989). The record is devoid of any documentation from which it can be established, either directly or inferentially, that Jennifer was trespassing on defendant's property at the time of her injury. Accordingly, plaintiff failed to establish that a genuine issue of material fact existed and, therefore, defendant is entitled to a judgment as a matter of law. *Quinto*, *supra* at 362-363.

Affirmed in part, reversed in part and remanded for trial. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Myron H. Wahls
/s/ Mark J. Cavanagh