STATE OF MICHIGAN

COURT OF APPEALS

AUDREY TATE,

Plaintiff-Appellant,

v

FOOTLOCKER, d/b/a KINNEY SHOE CORPORATION,

Defendant-Appellee.

UNPUBLISHED
February 19, 1999

No. 204985
Wayne Circuit Court
LC No. 96-616296 NO

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,* JJ.

MEMORANDUM.

Plaintiff Audrey Tate appeals of right from the circuit court order granting the motion for summary disposition filed by defendant Footlocker. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained injuries when she slipped on ice on the sidewalk outside defendant's store. Plaintiff filed suit alleging negligence. The trial court denied defendant's initial motion for summary disposition, finding that a question of fact existed as to whether plaintiff was on defendant's premises when the accident occurred. In its second motion for summary disposition defendant asserted that even assuming arguendo that plaintiff was on its premises when she fell, she was merely a licensee at the time because she had no intention of entering the store. Therefore, it owed her no duty to remove a natural accumulation of snow and ice. The trial court granted the motion, adopting defendant's argument as its reasoning.

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff's initial argument, that the trial court erred by granting the motion for summary disposition pursuant to MCR 2.116(C)(8), is without merit. Although the motion was brought under that subrule, it was argued and decided pursuant to MCR 2.116(C)(10). The trial court, like defendant,

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

assumed for purposes of the motion that plaintiff was on defendant's premises when the accident occurred. The trial court found that no genuine issue of fact existed as to plaintiff's status as a licensee. Because the parties relied on materials outside the pleadings, the trial court properly analyzed the motion pursuant to MCR 2.116(C)(10).

Furthermore, plaintiff argues that the trial court erred by granting defendant's motion for summary disposition because questions of fact existed. Plaintiff asserts that she may have been an invitee because she conferred a tangible benefit on defendant by observing its window display; therefore, defendant had a duty to remove the natural accumulation of snow and ice. In addition, plaintiff contends that as a third-party beneficiary of the covenant in defendant's lease requiring defendant to remove snow and ice from the sidewalk, she was entitled to sue for breach of the covenant.

We affirm the decision of the trial court. Whether a person is an invitee or a licensee can be a question of fact if reasonable persons of average intelligence can disagree over whether the guest was on the property for a social purpose, or for the purpose of rendering a service to the property owner. *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993). Plaintiff acknowledged that she merely observed defendant's window display, and that she had no intention of entering the store. Reasonable persons could not disagree that plaintiff's actions conferred no benefit on defendant; the trial court correctly concluded that plaintiff's status as a licensee could be determined as a matter of law. Because plaintiff was a licensee rather than an invitee, defendant had no duty to remove a natural accumulation of snow and ice. *Zielinski v Szokola*, 167 Mich App 611, 615; 423 NW2d 289 (1988). Plaintiff has not established that defendant's lease conferred on her any greater rights than were available to her as a licensee.

Affirmed.

/s/ Roman S. Gribbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain