STATE OF MICHIGAN

COURT OF APPEALS

MARY NELSON,

Plaintiff-Appellant,

v

ATHEA TRENTIN and CLAUDIA CLARK,

Defendants-Appellees,

and

GARY NIETHAMMER, KRISTIN ROHDE and CATHERINE NELSON

Defendants.

UNPUBLISHED
April 16, 1999

No. 205709
Ingham Circuit Court
LC No. 96-082896 NO

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court orders granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants Trentin and Clark in this premises liability action. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997).

As a social guest, plaintiff is a licensee rather than an invitee. See *Stitt v Holland Abundant Life Fellowship*, 229 Mich App 504, 507; 582 NW2d 849 (1998). In her appellate brief, plaintiff concedes that she was not an invitee. However, plaintiff argues that she was effectively a third-party

beneficiary of defendants' rental agreement, which provided that they were responsible for snow removal,[1] and therefore defendants owed her the same duty as an invitee.

We conclude that this argument is without merit. MCL 600.1405(1); MSA 27A.1405(1) provides, "A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise has undertaken to give or to do or refrain from doing something directly to or for said person." Plaintiff has presented no evidence that the rental agreement was for her benefit, rather than primarily for the benefit of defendant tenants and the landlord. Where the contract in question is primarily for the benefit of the parties thereto, the fact that a third person is incidentally benefited does not give that third person rights as a third-party beneficiary. *Oja v Kin*, 229 Mich App 184, 193; 581 NW2d 739 (1998).

Moreover, even an intended third-party beneficiary is only entitled to what the contract provides. *Blackwell v Citizens Ins Co of America*, 457 Mich 662, 668, n4; 579 NW2d 889 (1998). Here, the provision in the rental agreement does not specify any remedy for defendants' failure to remove snow, much less indicate that it operates to elevate the duty owed to licensees.

Plaintiff relies on *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703; 532 NW2d 186 (1995), and *Talucci v Archambault*, 20 Mich App 153; 173 NW2d 740 (1970). However, *Osman* and *Talucci* merely reiterate the familiar tort principle that those who may foreseeably be injured by the negligent performance of a contractual undertaking are owed a duty of care. See *Osman*, *supra* at 708; *Talucci*, *supra* at 161. Furthermore, unlike the present case, the plaintiffs in *Talucci* and *Osman* had invitee status, and the defendants were neither the owners nor the possessors of the premises but instead contractors.

Thus, the trial court correctly analyzed this case under standard premises liability law. A possessor of land owes no duty regarding open and obvious dangers.[2] *White v Badalamenti*, 200 Mich App 434, 437; 505 NW2d 8 (1993). Moreover, a licensee cannot recover if she knows or has reason to know of the condition and the risk involved. See *id.*; *Preston v Sleziak*, 383 Mich 442, 453; 175 NW2d 759 (1970). Here, the trial court found that the condition of the icy steps was open and obvious, and in fact plaintiff admitted that she knew of the hazardous condition.[3] Therefore, the trial court properly found that defendants owed no duty to plaintiff with regard to the steps. Accordingly, the trial court did not err in granting defendants' respective motions for summary disposition.

Finally, plaintiff notes that her injury was not the result of her failure to heed an open and obvious danger, but instead resulted from her attempt to avoid the danger. However, it would be illogical to hold defendants liable for the injury incurred in plaintiff's attempt to avoid the dangerous condition, when defendants were under no duty to warn her of or protect her from the dangerous condition itself.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra

[1] The rental agreement provided: "Tenants shall be responsible for grass cutting and snow removal."

[2] Plaintiff attempts to avoid the operation of the "open and obvious" doctrine by relying on *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), *Riddle v McLouth Steel Products Corp*, 440 Mich 85; 485 NW2d 676 (1991), *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495; 418 NW2d 381 (1988), *Hottman v Hottman*, 226 Mich App 171; 572 NW2d 259 (1997), and *Hughes v PMG Building, Inc*, 227 Mich App 1; 574 NW2d 691 (1997). However, in each of these cases, the open and obvious doctrine was examined in terms of the duty that a possessor of land owes to an *invitee*.

[3] Indeed, because of the danger, plaintiff attempted to avoid the icy steps.