STATE OF MICHIGAN

COURT OF APPEALS

JOSIE BELL MOORE,

Plaintiff-Appellee,

v

SARAH CHRISTIAN and WARREN CHRISTIAN,

Defendants-Appellants.

UNPUBLISHED
June 8, 1999

No. 206218
Wayne Circuit Court
LC No. 96-612461 NO

Before: Murphy, P.J., and Gage and Zahra, JJ.

MURPHY, P.J. (dissenting).

I respectfully dissent.

First, the majority assumes without deciding that plaintiff occupied the status of an invitee when she fell in the basement of defendants' home. I, however, would determine that the record in this case conclusively establishes that plaintiff was an invitee on defendants' property. "The duty owed by a landowner depends upon the status of the injured party at the time of the injury." *Doran v Combs*, 135 Mich App 492, 495; 354 NW2d 804 (1984). "An invitee is one who is on the owner's premises for a purpose mutually beneficial to both parties." *Id*. at 196. An invitee includes a personal friend or family member whose visit is not predominately for social purposes, but rather, for the benefit of the landowner. *Id*. "Whether someone is an invitee or a licensee on another's property may be a question of fact where persons of average intelligence can disagree over whether the guest is on the property for a social purpose or to render a service beneficial to the owner of the property." *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993).

Plaintiff provided unrebutted testimony at trial that she came to live with defendants in order to provide household assistance to defendants. Thus, plaintiff's presence on defendants' property was related to an activity of some tangible benefit to defendants. Further, there was no evidence that plaintiff's presence on defendants' property was predominately social in nature. Accordingly, because "persons of average intelligence" could not disagree regarding plaintiff's invitee status, the trial court correctly determined that plaintiff was an invitee as a matter of law. *Id*.

Having concluded that plaintiff was an invitee on defendants' property, the next question is whether the trial court erred in denying defendants' motion for a directed verdict because plaintiff failed to produce evidence that defendants knew or should have known of the existence of the defect to the basement floor tile that allegedly caused plaintiff's fall. This Court reviews a trial court's decision to deny a motion for a directed verdict as follows:

> In deciding if the trial court erred in denying a motion for a directed verdict, we review the evidence and all legitimate inferences that may be drawn in a light most favorable to the nonmoving party. If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. Furthermore, directed verdict are viewed with disfavor in negligence cases. [*Hunt v Freeman*, 217 Mich App 92, 98-99; 550 NW2d 817 (1996) (citations omitted).]

At trial, plaintiff testified that following her fall, she noticed that the tile on the basement floor where she had fallen was loose and scattered in different pieces, and that it was not laying on the floor as it was supposed to be. She also testified that the broken tile was in an area of the basement where water often accumulated when the washing machine was in use. Moreover, plaintiff testified that the presence of a toy on the basement floor contributed to her fall. Specifically, plaintiff maintained that she fell when she simultaneously stepped on the toy and the defective tile, essentially causing her to "do the splits."

In denying defendants' motion for a directed verdict, the trial court ruled as follows:

> The Court believes that the testimony of plaintiff concerning the chips on the sides of the tile together with her testimony describing the fall – this is not a situation where she described a heavy shoe or something hitting with violence such as a hammer or something that would chip the tile, it's just that her feet slipped out from under her and she hit her hip hard, not her foot hard. That, together with what she saw afterwards and the water, the Court thinks there is an issue of fact concerning whether or not the tile was in a state of disrepair before her fall . . . .

Although the trial court did not directly address the issue of notice, in viewing the evidence presented by plaintiff and all legitimate inferences arising from the evidence in a light most favorable to plaintiff, I believe that reasonable jurors could have concluded that defendants knew, or at least should have known, that the tile was in a defective condition. Further, although the trial court did not address the presence of the toy in denying defendants' motion for a directed verdict, in denying defendants' motions for judgment notwithstanding the verdict and a new trial, the trial court ruled that "whatever defendant[s] may argue about the tile, the testimony about the toy was very explicit. The plaintiff set forth sufficient evidence of a causible [sic] connection between the toy, the loose tile and the fall to create an issue for the jury." I agree. In my opinion, plaintiff's testimony regarding the presence of the toy was also sufficient to raise a question of fact whether defendants had notice of a dangerous condition on the premises.

Accordingly, finding no error requiring reversal in the other issues raised by defendants, I would affirm.

/s/ William B. Murphy