STATE OF MICHIGAN

COURT OF APPEALS

MARY FARAJ,

Plaintiff-Appellant,

v

MAJDIE HADOUS,

Defendant-Appellee.

UNPUBLISHED
June 13, 2000

No. 213144
Wayne Circuit Court
LC No. 97-718468-NO

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

In this negligence case, plaintiff appeals as of right from an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff is defendant's daughter. On December 24, 1996, plaintiff went to defendant's house to help defendant prepare Christmas dinner. Other members of the family were expected at defendant's house later that day. Plaintiff drove to defendant's house and parked in the driveway, next to a walkway that led to the front porch. After exiting her car, plaintiff walked one or two steps on the walkway before she fell. Plaintiff testified that she felt her right foot catch on something. She fractured her right ankle in the fall. However, plaintiff did not look to see and did not know what caused her fall. She speculated that she tripped on a raised section of concrete. In her deposition, plaintiff testified that, in her many visits to her mother's house over the years prior to the fall, she had never noticed raised concrete on the walkway.

Plaintiff filed a premises liability suit against defendant and claimed that she was an invitee and that defendant breached duties owed to her. Defendant moved for summary disposition under MCR 2.116(C)(10) on the grounds that plaintiff was a licensee and could not show that defendant had actual or constructive knowledge of the condition that allegedly caused plaintiff's fall. During the hearing on defendant's motion for summary disposition, plaintiff argued that the issue of plaintiff's legal status was a question of fact. Alternatively, plaintiff claimed that even if she was a licensee, defendant breached a duty to plaintiff.

The trial court determined that plaintiff was a licensee because preparing Christmas dinner did not confer the type of benefit on defendant which would elevate plaintiff's status to that of an invitee. The court also held that there was no indication that defendant breached a duty to plaintiff, and accordingly that summary disposition was appropriate.

On appeal, plaintiff argues that the trial court erred in determining as a matter of law that she was a licensee. We disagree.

To be an invitee, a plaintiff's presence on a defendant's land must have been related to an activity of some tangible benefit to the defendant. *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993). Conversely, one who enters the property with the permission of the owner for some purpose other than business is a licensee. *Bradford v Feeback*, 149 Mich App 67, 70; 385 NW2d 729 (1986). A social guest is a licensee, not an invitee. *Id*. If persons of average intelligence could 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, legal status is a question of fact and should not be decided on a motion for summary disposition. *White, supra*, 200 Mich App 436.

Here, the trial court correctly determined as a matter of law that plaintiff was a licensee. Plaintiff testified that she went to defendant's house to help prepare Christmas dinner. Other members of the family were expected at defendant's house that day. Plaintiff did not state whether she would still be present at defendant's house when the rest of the family arrived; however, we believe that it is reasonable to infer that plaintiff would partake in the dinner she and defendant were to have prepared given the statements made by both attorneys during the hearing on the motion for summary disposition. While plaintiff's assistance with the dinner preparation may have benefited defendant, this benefit was incidental to plaintiff's primary purpose for visiting defendant, which was social.

Plaintiff also claims that the affidavit she submitted to the trial court created a genuine issue of material fact – whether or not defendant breached her duties to plaintiff. According to plaintiff, if she was an invitee at the time of her injury, the affidavit showed that the walkway was a dangerous condition that defendant should have recognized and warned her about. We have already concluded that plaintiff was a licensee. However, were plaintiff to be considered an invitee at the time of her injury, defendant did not breach any duties owed to plaintiff. Plaintiff did not present any evidence that showed that the raised section of concrete existed on the day of her injury. Plaintiff testified that, during her many visits to defendant's house prior to her fall, she never noticed a raised section of concrete in the walkway. Moreover, immediately after her fall, plaintiff did not look to see what caused her fall and did not know what caused her fall. It was not until approximately two months after she fell that plaintiff examined the walkway and discovered a raised section of concrete. Because plaintiff did not establish that the condition existed on the day of her injury, she did not establish that defendant breached her duties by failing to inspect or warn plaintiff of the condition.

Alternatively, in light of our conclusion that plaintiff was a licensee at the time of her injury, we find that plaintiff's affidavit was insufficient to show that defendant should have known of the alleged defect that caused plaintiff's fall.

An affidavit in opposition to a motion must: "(a) be made on personal knowledge; (b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and (c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit." MCR 2.119(B)(1). Opinion evidence is not sufficient to show that a factual dispute exists. *Marlo Beauty Supply v Farmers Ins Group*, 227 Mich App 309, 321; 575 NW2d 324 (1998), modified 461 Mich 1 (1999); *DeSot v Auto Club Ins Ass'n*, 174 Mich App 251, 253; 435 NW2d 442 (1988).

Plaintiff's affidavit did not state with particularity any facts that showed that defendant knew or should have known of the condition of the walkway. As the trial court noted, the affidavit merely expressed an opinion. Opinion evidence is not sufficient to show that a factual dispute exists. *Marlo Beauty Supply, supra*, 227 Mich App 321; *DeSot, supra*, 174 Mich App 253. Therefore, plaintiff failed to show that defendant breached a duty owed to her. Because plaintiff did not show that defendant breached her duty, plaintiff failed to establish a prima facie case of negligence. *Krass v Tri-County Security*, 233 Mich App 661, 667-668; 593 NW2d 578 (1999). Therefore, defendant was entitled to summary disposition as a matter of law. *Quinto v Cross & Peters*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Henry William Saad