

STATE OF MICHIGAN
COURT OF APPEALS

JOHNNIE A. YEAGER and RHONDA JEAN
YEAGER,

UNPUBLISHED
June 5, 2001

Plaintiffs-Appellants,

v

No. 221274
Oakland Circuit Court
LC No. 98-003358-NO

DAVID LEMASTER and JULIE LEMASTER,

Defendants-Appellees.

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Johnnie Yeager (hereinafter plaintiff) sought damages for injuries sustained when his tractor fell over on him while he was attempting to pull a stump out of land owned by defendant David LeMaster (hereinafter defendant) and his wife. Plaintiff's wife had a derivative claim for loss of consortium. The trial court ruled that defendants did not owe plaintiff a duty because he was a licensee and because the danger was open and obvious.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

A landowner's duty to a person on the premises depends on that person's status. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000), amended ___ Mich ___ (2000). A licensee is one who enters another's property pursuant to the owner's consent while an invitee is usually one who enters another's property for business purposes. *Id.* at 596-

597. “If there is evidence from which invitee status might be inferred, it is a question of fact for the jury.” *Id.* at 595. If there is no factual dispute concerning the purpose for which the plaintiff was on the defendant’s premises, the plaintiff’s status as an invitee or licensee is a question of law that is reviewed de novo on appeal. *Stitt v Holland Abundant Life Fellowship*, 229 Mich App 504, 505; 582 NW2d 849 (1998), rev’d on other grounds 462 Mich 591 (2000).

“A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee’s visit.” *Stitt, supra*, 462 Mich at 596-597. A “landowner has a duty . . . not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards.” *Id.* at 597.

Plaintiff testified at his deposition that not only was he involved in cutting the roots of the stump, he was well aware that he couldn’t use the tractor to pull out a stump whose roots were not completely severed because the front end of the tractor was too light to provide an effective counterbalance. Thus, whether plaintiff was an invitee or a licensee, defendants did not owe him a duty because he was aware of the danger presented by the situation. However, when plaintiff asked defendant if the stump was clear and he assumed the duty to respond, he had an obligation to act with due care. *Zychowski v A J Marshall Co, Inc*, 233 Mich App 229, 231; 590 NW2d 301 (1998). If defendant told plaintiff the stump was clear, knowing plaintiff was going to act on what he said, and didn’t know or check to see if it actually was clear, one could find that he acted without due care. Therefore, we reverse the trial court’s ruling that defendant did not owe a duty to plaintiff. However, because defendant’s wife did not owe a duty to plaintiff in the first instance and did not voluntarily undertake any action she was not legally required to perform, we affirm the trial court’s ruling as to her.

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

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly