

STATE OF MICHIGAN

COURT OF APPEALS

TERRIE HOCHSCHILD,

Plaintiff-Appellant,

v

W. G. WADE SHOWS, INC.,

Defendant-Appellee.

UNPUBLISHED

April 9, 2002

No. 228450

Wayne Circuit Court

LC No. 99-903349-NO

Before: K.F. Kelly, P.J. and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff lived with her boyfriend who resided in a trailer provided by defendant, his employer. Plaintiff was injured when the small stepladder providing access to the trailer slipped out from under her. Plaintiff argued that she was defendant's invitee because she was an independent contractor who provided baby-sitting services to other employees. Based on the evidence presented, the trial court found that defendant did not receive any benefit from plaintiff's services and thus plaintiff was a licensee. Because she was aware of the dangerous condition and the risk it presented, defendant did not have a duty to protect her against it.

Plaintiff argues on appeal that the trial court erred in focusing on whether there was "an immediate or direct commercial relationship" between herself and defendant. She argues that regardless of whether her presence conferred any benefit on defendant, she was an invitee because she was a social guest of her boyfriend, defendant's tenant, and was injured in an area under defendant's control. "Plaintiff may not shift ground on appeal and come up with new theories here after being unsuccessful on the one presented in the trial court." *Three Lakes Ass'n v Whiting*, 75 Mich App 564, 581; 255 NW2d 686 (1977). In other words, "[w]hen a cause of action is presented for appellate review, a party is bound to the theory on which the cause was prosecuted or defended in the court below." *Gross v General Motors Corp*, 448 Mich 147, 161-162 n 8; 528 NW2d 707 (1995).

Given that plus the fact that plaintiff has failed to address the basis of the trial court's ruling, plaintiff has not established a right to relief. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). While this Court may address an unpreserved issue

if it is one of law and all facts necessary for its resolution were presented, *Joe Panian Chevrolet, Inc v Young*, 239 Mich App 227, 233; 608 NW2d 89 (2000), plaintiff relies on excerpts from various depositions, most of which were not presented to the trial court by either party. Documentary evidence that was not submitted below cannot be considered on appeal. *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 579-580; 609 NW2d 593 (2000), aff'd sub nom *Byrne v Michigan*, 463 Mich 652 (2001); *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 18; 527 NW2d 13 (1994).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh