

STATE OF MICHIGAN
COURT OF APPEALS

LOIS J. HINTON,

Plaintiff-Appellant,

v

JOYE DeGROAT and FORD DeGROAT,

Defendants-Appellees.

UNPUBLISHED
February 24, 2004

No. 242894
Muskegon Circuit Court
LC No. 01-041127-NO

Before: Markey, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

In this negligence action, plaintiff appeals by right from the trial court's judgment granting defendants' motion for summary disposition. We affirm.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In reviewing de novo a decision on a motion for summary disposition based on the lack of a material factual dispute, an appellate court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted in the light most favorable to the party opposing the motion. MCR 2.116(C)(10), (G)(5); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition was appropriately granted if there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law. *Id.*

Plaintiff first asserts that the trial court erred in determining that no genuine issue of fact exists regarding her status as a licensee on defendants' property. When determining whether an individual is a trespasser, licensee, or invitee for premises liability purposes, if persons of average intelligence can disagree regarding the purpose for a visitor's presence, her status is a question of fact. *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993). The Michigan Supreme Court recently clarified, in *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596, 603-604; 614 NW2d 88 (2000), the tests for whether an individual is a licensee or an invitee for purposes of premises liability. A licensee is a person privileged to enter the land of another by the possessor's consent; a social guest is a licensee. *Id.*, 596. Regarding invitees, *Stitt* explains that "the owner's reason for inviting persons onto the premises is the primary consideration when determining the visitor's status. In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose." *Id.*, 604 (emphasis in original). Defendant Joyce DeGroat's call requesting her sister's help during an emergency cannot be considered an opening of defendants' premises for a commercial purpose

so as to raise plaintiff's legal status to that of invitee under the *Stitt* test. Clearly, plaintiff was a social guest and, as such, was a licensee.

Plaintiff next asserts that the trial court erred in determining that no genuine issue of fact exists regarding defendants' duty to warn her of the icy condition of their driveway. A property owner must warn licensees of any hidden dangers about which the owner knows or has reason to know, if the licensee does not know or have reason to know of the dangers involved. The owner owes no duty of inspection, nor any duty to prepare the premises for the safety of the licensee. *Id.*, 596. Viewing the evidence in a light most favorable to plaintiff, we agree with the trial court that there was conflicting deposition testimony concerning whether the icy condition of the driveway was obvious. For purposes of our analysis, we will assume, as did the trial court, that it was not. But, defendants' duty to warn plaintiff as a licensee only extends to hidden dangers about which defendants knew or had reason to know. Here, plaintiff has offered no evidence that defendants knew or had reason to know of the danger. Indeed, they were both elderly, one confined to a wheel chair and one suffering a medical emergency. There was absolutely no evidence that they knew or had reason to know that the lower part of their driveway was covered with "black ice." Therefore, no factual dispute exists concerning defendants' duty to warn plaintiff.

Because our resolution of this issue essentially decides the case, we need not address any of the other issues plaintiff raises.

We affirm.

/s/ Jane E. Markey

/s/ William B. Murphy

/s/ Michael J. Talbot