STATE OF MICHIGAN

COURT OF APPEALS

TIMOTHY DAVIS,

Plaintiff-Appellant,

v

IRVIN FAUROT and CHRISTINE FAUROT,

Defendants-Appellees.

UNPUBLISHED
December 8, 2005

No. 255902
Newaygo Circuit Court
LC No. 03-018555-NO

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

Plaintiff Timothy Davis appeals as of right from the trial court's grant of summary disposition to defendants Irvin Faurot and Christine Faurot (the Faurots). We reverse.

I. Basic Facts And Procedural History

Davis suffered severe burns when an open bucket of flammable liquid caught fire while he was working on his automobile in the Faurots' garage. The plastic, unmarked bucket contained a mixture of mineral spirits and gasoline that Irvin Faurot used to clean his tools. Davis apparently inadvertently ignited the liquid while he was either welding or cutting metal with a power saw. When Davis noticed the bucket in flames, he picked it up by the handle and tried to carry it outside the garage. Davis' clothes caught on fire and some of the burning liquid splashed on his face and body. In the process, Davis was badly burned, and the garage burned to the ground. The only fire extinguisher in the garage was a simple, hand-pumped water extinguisher.

Davis claimed that he was never aware of the bucket, or its flammable contents, before the fire. Irvin Faurot claimed that Davis did know about the bucket and had even used it himself to clean tools.

Davis filed suit, claiming that he was a licensee on the Faurots' property because he performed services, or odd jobs, for them in exchange for use of their garage and that the Faurots were liable for his injuries because they failed to protect him from the hazard. The Faurots moved for, and were granted, summary disposition under MCR 2.116(C)(10). The trial court held that Davis was a licensee and that the bucket was not a hidden danger.

II. Motion for Summary Disposition

A. Standard of Review

We review a motion for summary disposition de novo, and our review is limited to the evidence that was presented to the trial court at the time the motion was decided."[1] A motion brought under MCR 2.116(C)(10) should be granted when, "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." The motion tests whether there is factual support for a claim or if it instead can be decided as a matter of law.[2] All of the documentary evidence submitted must be viewed in a light most favorable to the nonmoving party.[3] Similarly, "[a]ll reasonable inferences are to be drawn in favor of the nonmovant."[4] "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[5]

B. Davis' Status

Davis argues that there was a genuine issue of material fact regarding whether he was an invitee or a licensee while on the Faurots' premises. Davis claims that he and the Faurots had a quid pro quo arrangement, by which he was allowed to use the Faurots' garage to work on his cars and, in return, he helped the Faurots with various tasks, such as heavy lifting, installing drywall, and loading and unloading the Faurots' van for excursions to the flea market.

Invitee status is generally afforded to persons who enter another's property for business purposes.[6] "In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose."[7] "As a general rule, if there is evidence from which invitee status might be inferred, it is a question for the jury."[8] But absent a showing of an invitation for a commercial purpose, an invited visitor is considered a licensee.[9] The focus "is on the owner's

---

[1] *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005).

[2] *Scalise*, *supra* at 10.

[3] *Id*.

[4] *Id*.

[5] *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

[6] *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000).

[7] *Id*. at 604 (emphasis in original).

[8] *Id*. at 595.

[9] *Id*. at 606.

reason for inviting the person onto the premises."[10] In defining commercial purpose, our Supreme Court explained that

> the imposition of additional expense and effort by the landowner, requiring the landowner to inspect the premises and make them safe for visitors, must be directly tied to the owner's commercial business interests. It is the owner's desire to foster a commercial advantage by inviting persons to visit the premises that justifies imposition of a higher duty. In short, we conclude that the prospect of *pecuniary* gain is a sort of quid pro quo for the higher duty of care owed to invitees.[11]

"Pecuniary" is defined as "of, or pertaining to, or consisting of money."[12] Irvin Faurot testified that he let several of his friends, including Davis, use his garage to do auto work, but he never charged them and never intended that any of the work done be for profit. Although Davis cites various services that he performed for the Faurots in exchange for use of their garage, we cannot conclude that this arrangement qualifies as a "commercial" interest, which involves the landowner's desire for pecuniary, or monetary, gain, sufficient to invoke the higher duty owed to invitees in this case.

Because there was no evidence presented of any intent of pecuniary gain by the Faurots, there was no genuine issue of material fact with respect to whether there was a commercial aspect to Davis' work in the Faurots' garage. Therefore, there was no genuine issue of material fact that Davis was not an invitee. Accordingly, we conclude that the trial court properly concluded as a matter of law that Davis was a licensee.

C. Hidden Danger

Davis argues that, if he was a licensee at the time of the incident, there was a genuine issue of material fact with respect to whether the bucket, containing a mixture of combustible and flammable fluids, was a hidden danger.

The duty owed to a licensee is less than that owed to an invitee.[13] A landowner only has a duty to warn a licensee of hidden, unreasonably dangerous conditions of which the landowner is aware or has reason to be aware.[14] The landowner does not have any duty to a licensee to seek out hidden dangers or to make the premises safe.[15] There is no duty to warn a licensee about a

---

[10] *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 63; 680 NW2d 50 (2004).

[11] *Stitt, supra* at 604 (emphasis added).

[12] *Random House Webster's College Dictionary* (1997).

[13] *Stitt, supra* at 596-597.

[14] *Burnett v Bruner*, 247 Mich App 365, 372; 636 NW2d 773 (2001).

[15] *Stitt, supra* at 596.

danger of which he already knows or should know.[16] And licensees assume the ordinary risks associated with their visit.[17]

Irvin Faurot admitted that he knew about the plastic bucket containing flammable fluid located in the garage because he put it there. Davis claimed he never knew about the bucket before the incident. This was contradicted by Irvin's testimony that Davis did, in fact, know about the bucket. Therefore, whether Davis had knowledge of the bucket is a factual dispute dependant on credibility. A court may not determine credibility in ruling on a motion for summary disposition.[18] Therefore, we conclude that the trial court erred in granting the Faurots summary disposition.

Additionally, we note that even if it is determined that Davis did not have knowledge of the bucket, the question would nevertheless remain whether Davis *should* have known about the danger of the bucket.

D. Christine Faurot's Liability

We reject the Faurots' argument that Christine Faurot was not in possession of the premises. Contrary to the Faurots' position, it is simply unreasonable to claim that a homeowner is not in possession of land simply because she is temporarily away on vacation.

E. Conclusion

Given our conclusion that there was no genuine issue of material fact that Davis was a licensee, we need not address Davis' arguments regarding the duties owed to invitees.

In sum, we conclude that the trial court properly determined that there was no genuine issue of material fact that Davis was a licensee. But we conclude the trial court erred in concluding that there was no genuine issue of material fact with respect to whether the open, unmarked bucket of flammable liquid was a hidden danger.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Jane E. Markey

---

[16] *Id*.

[17] *Id*.

[18] *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004).