STATE OF MICHIGAN

COURT OF APPEALS

ELFRIEDA DOBROWA,

Plaintiff-Appellee,

and

HAROLD DOBROWA,

Plaintiff,

v

SPARROW HEALTH SYSTEMS, d/b/a SPARROW HOSPITAL,

Defendant-Appellant,

and

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

UNPUBLISHED
December 6, 2007

No. 271776
Ingham Circuit Court
LC No. 05-000091-NO

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant Sparrow Health Systems appeals by leave granted from the trial court's order denying its motion for summary disposition in this premises liability case.[1] Plaintiff filed this action after she was injured in an automatic revolving door at the entrance to Sparrow Hospital. Because the record contains some evidence that plaintiff was on defendant's premises to assist a patient in obtaining a medical service, and that the hospital could have lost the commercial opportunity to provide that service if plaintiff had not accompanied her patient friend, a factual question remains regarding plaintiff's status; consequently, we affirm and remand for trial.

[1] Plaintiff's husband, plaintiff Harold Dobrowa, and defendant Blue Cross Blue Shield of Michigan are not parties to this appeal.

I

On June 30, 2004, plaintiff, a 79-year-old woman, accompanied her friend Audrey Bolsen to the hospital where Bolsen had an appointment for a chest X-ray. Another friend, Betty Stone, drove the three women to the hospital. Bolsen, an elderly lung cancer survivor, testified that she needs to have chest X-rays taken periodically as follow-up to her cancer treatment. Bolson further testified that she does not like to go anywhere by herself and "always" has others with her when she goes to the hospital. Bolsen also stated that she would never go to the hospital by herself because she "would get lost." Stone testified that Bolsen asked both her and plaintiff to go to the hospital with her for the X-rays. Stone stated that Bolsen does not like to go to the hospital by herself. The three women had plans to go to lunch after Bolsen's X-ray. The record contains no evidence that defendant requested someone accompany Bolsen to the hospital for any direct medical reason, or that plaintiff had contemplated shopping at the facility's gift shop, patronizing its cafeteria, or making inquiry for any present or future medical needs of her own.

After the X-ray, the three women left the building through an automatic revolving door with large compartments. All three were in one compartment, Stone leading the way, Bolsen next, and plaintiff last in line. A witness to the accident, Larry Thorpe, was standing outside of the hospital, about five feet from the door. Thorpe testified at deposition that he watched the first two women exit the door, but as plaintiff came out, the automatic door "came too fast, like jumped." He testified that he saw the door hit plaintiff on the right side knocking her to the ground. He stated that he ran to try to grab her, but he did not make it in time and plaintiff hit the ground. Plaintiff suffered a fractured hip.

The hospital's electronics technician testified by deposition that hospital policy was to check the doors every day and that the door was checked on the day of the incident. But he also testified that on the day in question, the sensor beams designed to protect a person from being struck by the door were positioned such that a small area where a person might be located was overlooked. The technician added that no such incident had happened before, and that it could only happen when there were several persons in the compartment and the last of whom was a slow walker.

Thereafter, plaintiff brought this premises liability action against defendant. Defendant moved for summary disposition on the ground that plaintiff was not a business invitee, but was instead a mere licensee on the premises, and thus defendant had no duty to plaintiff to inspect for and discover an irregularity of this sort in the automatic door. The trial court denied the motion holding that a question of fact existed concerning plaintiff's status on defendant's property, i.e., that hospitals sometimes ask a patient to bring a helping companion. In denying the motion, the trial court stated as follows:

> [I]t's certainly well known that Sparrow Hospital, indeed every other medical place in town, they generally do not discourage, indeed they encourage persons who come there to bring people who support them, people who transport them, people who hold their hand while they're getting their blood taken, whatever, because we know that medicine practice [in that] context is not only better for the patient, but better for the medical care provider. So, having them there, and in some instances it's required, that their presence there was because of a commercial relationship clearly between the patient and the hospital. And the patient's supporters, if you will, are those who are assisting the patient, are an important part of that process, and their presence—I mean, I don't think it can be

> seriously argued that it does not provide—although that's not the terminology used by the Michigan Supreme Court technically. But certainly it confers an indirect benefit to the hospital. One is if those people were not encouraged, it might tell the patient to go some place else. But in any case, they are there and they do serve a purpose. So I think that there's at least a fact question.

Concerning the duty to inspect, the court stated as follows:

> [W]hether or not they inspected every day, if I understand it, although this is probably not necessary for me to say it, it sounds like you have a condition. I mean you can call it a defect. . . . [T]he way this thing works, even though the lights were working, quote, properly, and they were lined up in a certain way as if a person comes through under certain circumstances, the . . . electronic eyes are not able to perform the function for which they were installed. And, I'm not sure that the failure to inspect is all that pertinent. I mean, it was installed either by Sparrow Hospital or someone acting for them. So they are unquestionably responsible for the condition as it existed on that case. We're not talking about somebody who dropped some water just ten minutes before. That's—I assume had been there for months, if not years . . . .

This Court granted defendant's application for leave to appeal.

II

When reviewing a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(10), this Court reviews the record de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). MCR 2.116(C)(10) tests the factual support of a claim. *Id*. "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "As a general rule, if there is evidence from which invitee status might be inferred, it is a question for the jury." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 595; 614 NW2d 88 (2000).

III

Defendant argues on appeal that the trial court erred in holding that a question of fact existed because there was no evidence that plaintiff was at the hospital to help the patient. Therefore, defendant asserts that the court went beyond the facts in creating any such issue. Defendant's argument focuses on the court's ruling on the invitee/licensee distinction. In particular, defendant asserts that because plaintiff was in the hospital solely as the patient's social companion and with no contemplated commercial purpose, plaintiff was a mere licensee on the premises. When determining whether an individual is a trespasser, licensee, or invitee for premises liability purposes, we must consider the purpose of the individual's presence. 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).

In *Stitt, supra*, at 596-597, our Supreme Court delineated the difference between the respective duties owed a licensee versus an invitee:

> A "licensee" is a person who is privileged to enter the land of another by virtue of the possessor's consent. 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.
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> An "invitee" is a "person who enters upon the land of another upon an invitation which caries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for [the invitee's] reception." The landowner has a duty of care, 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. [Internal citations omitted.]

The Supreme Court pointed out the divergence of case law on what circumstances create invitee status and reconciled them as follows:

> [W]e conclude 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. Thus, we hold 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*., at 604.]

In *Stitt*, the Court held that the plaintiff, who had fallen in the church parking lot when accompanying her friend to a bible study class, was a licensee, not an invitee, because churchgoers do not confer a business or commercial benefit on the church, i.e. they participate for their own benefit, not that of the church. *Stitt, supra*, at 605-606. Ultimately, the Supreme Court stated that it "considered a business purpose or business or commercial benefit to the landowner as a necessary requirement in order for a visitor to be deemed an invitee." *Id*., at 605.

The parties have not pointed to, and we have not located, any published case from this state specifically addressing the status of a person similarly situated to plaintiff in this instance. However, we find the holding in *Ackerberg v Muskegon Osteopathic Hosp*, 366 Mich 596; 115 NW2d 290 (1962) helpful to our analysis. In *Ackerberg*, our Supreme Court treated the defendant hospital's admission as uncontested that a parent bringing his injured child to a hospital's emergency room was an invitee. *Id*., at 599. But in that case, it was obvious that the parent was acting directly to attend to his small child's medical needs, and it was extremely likely he would pay for the hospital's medical services. The facts in the present case are not so straightforward.

Our review of the record reveals that Bolsen testified that she "never" went to the hospital alone and specifically asked plaintiff and Stone to accompany her to the hospital for her X-ray procedure. Of the utmost importance though is the fact that when asked if she ever went to the hospital alone, Bolsen answered, "No. I would get lost." This statement is key to our analysis because it constitutes evidence that plaintiff accompanied Bolsen not merely to have lunch as defendant argues, but also to facilitate the patient's medical business at the hospital. Particularly, this testimony shows that Bolsen considered herself unable to go to or navigate the hospital alone. Because of this inability, Bolsen asked plaintiff and Stone to accompany her to the hospital for her X-ray. It further indicates that without the transportation and directional assistance plaintiff and Stone provided, defendant would have lost the commercial opportunity to provide medical services to Bolsen. Thus, we conclude this testimony is record evidence "from which invitee status might be inferred." *Stitt, supra*, at 595. In evaluating the evidence in the light most favorable to the nonmoving party, while at the same time recognizing that defendant's view of the evidence is contradictory, we hold that a factual question remains concerning plaintiff's reasons for visiting defendant's premises, and thus, her status as an invitee or licensee on that occasion.

In reviewing this legal issue, we conclude that a person on hospital premises as a patient's aid, in the sense of providing some kind of service separate from and beyond mere companionship, present at the request of either the facility or the patient, is an invitee. In short, a person who in some meaningful way is enabling a patient's consumption of, participation in, or recovery from, medical services enjoys that patient's status on hospital grounds as an invitee especially when the person's presence facilitates a medical provider's commercial opportunity.

Although the trial court's determination that a question of fact exists regarding plaintiff's status as invitee was overly broad and deficient in reference to evidence found in the record, it arrived nevertheless, at the correct result. See *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997) (this Court will not reverse when the trial court reaches the correct result regardless of the reasoning employed).

IV

The trial court questioned the pertinence of whether defendant had inspected the automatic door before plaintiff's accident on the ground that defendant was in any event responsible for any defective condition, and that the hazard alleged in this instance did not materialize just before the accident. But defendant's electronics technician testified at deposition that "there should have been another sensor from the factory because there was a void in the detection zone." And plaintiff's expert opined by affidavit that the door in question should have been inspected daily, and that a properly performed inspection would have brought to light "the triangular area lacking adequate presence detection coverage prior to [plaintiff's] fall," and induced "remedial measures . . . thereby avoiding [plaintiff's] accident."

Again, a premises owner has neither a duty of inspection nor of affirmative care to make the premises safe for the licensee's visit. *Stitt, supra*, at 596-597. But a premises owner owes a duty to business invitees to "inspect the premises and . . . make any necessary repairs or warn of any discovered hazards." *Id.*, at 597. Accordingly, if a jury determines plaintiff was an invitee, then a question of fact exists concerning whether defendant fulfilled its duty to inspect, make

repairs, or warn of a danger. If a jury determines she was a licensee, then there was no duty to inspect, and thus no breach of the corresponding duty.

IV

In conclusion, because the record contains some evidence that plaintiff visited defendant's premises to assist a patient in obtaining a medical service and thereby providing defendant with a commercial opportunity, a factual question remains concerning plaintiff's status, and we affirm the trial court's decision to deny defendant's motion for summary disposition.

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

/s/ Pat M. Donofrio
/s/ Joel P. Hoekstra
/s/ Jane E. Markey