

STATE OF MICHIGAN
COURT OF APPEALS

DAVID CALLISON and DEBORAH
CALLISON,

UNPUBLISHED
July 17, 2012

Plaintiffs-Appellants,

v

No. 301729
Wayne Circuit Court
LC No. 09-007146-NO

HATZEL & BUEHLER, INC.,

Defendant-Appellee,

and

RONALD E. BORRIE, d/b/a R.E.B.
LANDSCAPE,

Defendant/Cross-Plaintiff,

and

RTI LABORATORIES, INC.,

Defendant/Cross-Defendant.

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition to defendant Hatzel & Buehler, Inc., under MCR 2.116(C)(10). We affirm.¹

Plaintiff David Callison was employed as a delivery truck driver for DHL, a parcel delivery service. Pursuant to his employment, plaintiff was required to access a freestanding

¹ By order dated December 23, 2009, plaintiffs stipulated to the dismissal of defendant Borrie. On July 16, 2010, plaintiffs stipulated to the dismissal of defendant RTI Laboratories, Inc.

DHL drop box that was located on the corner of property possessed by defendant Hatzel & Buehler, Inc. On February 29, 2008, plaintiff approached the drop box, stepped on an accumulation of ice and snow in front of the box, and then slipped and fell. As a result of his fall, plaintiff injured his hip and knee.

Plaintiff testified that on the day of his fall he did not go inside defendant's building, although in the past when defendant called for a pick-up he would go into defendant's offices. Defendant was not one of DHL's "house accounts" at which drivers were required to stop every day. However, plaintiff's employer required that he check the outside drop box every day. On the date of the fall, plaintiff intended to pick up packages, as well as place shipping supplies in the box. With respect to the drop box, anybody could use the box and the supplies therein. By affidavit, plaintiff attested that he regularly took out of the drop box items defendant intended to ship via DHL.

Defendant's branch manager Phil LaVallee testified in his deposition that at the time of the foregoing events, defendant Hatzel & Buehler, Inc. leased the property upon which the DHL drop box stood. The drop box was already present on the property at the time defendant entered into the lease in 2004. Defendant did not request the placement of the DHL drop box on the property. Defendant's employees did occasionally use the drop box in 2007 and 2008. Other companies, as well as members of the general public, similarly used this DHL drop box.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that because plaintiff was a mere licensee, as opposed to a business invitee, defendant had no duty to plaintiff to inspect for and discover the accumulation of ice and snow. Alternatively, defendant argued that, even if plaintiff were a business invitee, no duty was owed to the plaintiff as the presence of the ice and snow was open and obvious. In response, plaintiffs argued that plaintiff David Callison was an invitee on defendant's property, or alternatively that a question of fact existed in this regard.

The trial court ruled that plaintiff was a licensee, not a business invitee, at the time of his fall. The court stated, "[plaintiff] was an employee of DHL, a DHL job, getting the package for DHL, obviously it was to the benefit of [defendant] and any other person that used that box as well, but it was part of [plaintiff's] employment, to service his own company's box. So he was not an invitee." Thereafter, the trial court entered an order granting defendant's motion for summary disposition, and this appeal followed.

We review a trial court's decision to grant or deny a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

In a premises liability claim, a plaintiff must prove the elements of negligence, which are: “(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was a proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered damages.” *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). A landowner’s specific duty to a plaintiff depends on the plaintiff’s status at the time of the injury. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Put another way, the nature of a landowner’s duty will turn upon whether the plaintiff was a trespasser, licensee, or invitee. *Id.*

In *Stitt*, the Michigan Supreme Court clarified the distinction between a licensee and an invitee, first describing a licensee:

A “licensee” is a person who is privileged to enter the land of another by virtue of the possessor’s consent. [Citation omitted.] 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. [*Id.* at 596.]

By contrast, our Supreme Court in *Stitt* described an invitee as

“a person who enters upon the land of another upon an invitation which carries 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.” [Citation omitted.] The land owner 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. [Citation omitted.] Thus, an invitee is entitled to the highest level of protection under premises liability law. [*Id.* at 597.]

The *Stitt* Court further explained that an “invitee” is a person who is on the landowner’s premises for a reason connected to the landowner’s commercial business interests:

In harmonizing our cases, we 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 gains is a sort of quid pro quo for the higher duty of care owed to invitees. [*Id.* at 603-604.]

In this case, plaintiff was not on the premises at defendant’s invitation. There was no commercial agreement between DHL and defendant for daily parcel pick-up and/or delivery. Defendant was not one of DHL’s “house accounts,” which would have required plaintiff to stop at the offices daily to check for a parcel pick-up. Further, defendant did not specifically call for a pick-up at its offices on that day nor did plaintiff enter defendant’s office building. Instead,

plaintiff was simply servicing a freestanding DHL drop box that could be used by any member of the general public. With respect to the drop box itself, defendant did not request placement of the box on its property. The box was already on the premises at the time defendant entered into a lease agreement with the lessor of the property in 2004.

Based upon the foregoing, we conclude that the trial court did not err when it found that plaintiff was, at the time of his injuries, a licensee. Plaintiff was not on the premises by virtue of an invitation extended by defendant. Plaintiff did not enter the property with the purpose of transacting business with defendant. Under the circumstances of this case, the conclusion that plaintiff was a licensee rather than an invitee is consistent with the underlying rationale for imposing a greater duty upon a landowner who has invited a person upon its property anticipating a commercial advantage. *Stitt*, 462 Mich 603-604. Because there was no evidence from which to infer that plaintiff was an invitee, the trial court properly determined as a matter of law that plaintiff was a licensee, and the court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Michael J. Riordan