

STATE OF MICHIGAN
COURT OF APPEALS

Estate of SKYLAR WHEELER

ASHLEY DEMEYER, Personal Representative for
the Estate of SKYLAR WHEELER,

Plaintiff-Appellant,

v

LORI SHEETS and GARY SHEETS,

Defendants-Appellees.

UNPUBLISHED

June 21, 2012

No. 303804

Midland Circuit Court

LC No. 10-006784-NO

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

MEMORANDUM.

In this premises liability action, plaintiff appeals by right the trial court's grant of summary disposition in favor of defendants. We affirm.

The material facts of the case are undisputed. Plaintiff's claim arose from the drowning death of her daughter, a toddler, in defendants' backyard pond. Defendants, who were the child's paternal grandparents, were not home when the child drowned. The child and her father (defendants' son) were visiting defendants' home on the day the child drowned. Both the child and her father had visited defendants' home in the past.

After some discovery, defendants filed a motion for summary disposition under MCR 2.116(C)(10). Relying on *Stopczynski v Woodcox*, 258 Mich App 226; 671 NW2d 119 (2003), the trial court determined that the child was a licensee on defendants' property, that the pond was an open and obvious danger, and that defendants had no duty to render the pond inaccessible. Accordingly, the trial court granted summary disposition in favor of defendants.

We review de novo the trial court's ruling on the summary disposition motion. *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 7; 792 NW2d 372 (2010). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We consider the pleadings and other the relevant record

evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Dancey*, 288 Mich App at 7.

In this case, the trial court correctly recited and followed Michigan precedent. The court recognized that defendants' duty depended upon the classification of the child as a trespasser, a licensee, or an invitee. *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 60; 680 NW2d 50 (2004), citing *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). The court acknowledged that there was no dispute the child was a licensee. The court then correctly recited our Supreme Court's delineation of the duty a landowner owes to a licensee:

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.* [*Stitt*, 461 Mich at 596, emphasis added.]

A landowner is not liable to licensees for open and obvious dangers, except under circumstances not applicable in this case. *Stopczynski*, 258 Mich App at 231-233. Moreover, according to current Michigan precedent, the decision regarding whether a danger is open and obvious to licensees requires an objective assessment, regardless of the licensee's age. See *id.* at 232.¹

In this case, the record demonstrates that the pond in defendants' backyard was an open and obvious danger to a reasonable licensee. Consequently, defendants had no duty to take affirmative steps to bar the exits from their home, or to render the pond inaccessible. The trial court correctly granted summary disposition in favor of defendants.

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O'Connell
/s/ Michael J. Talbot

¹ We acknowledge that this Court has applied a heightened duty of care in a case involving a child invitee. *Bragan ex rel Bragan v Symanzik*, 263 Mich App 324, 333-335; 687 NW2d 881 (2004). We also acknowledge that this Court has determined that a question of fact may arise regarding whether a glass door presents an unreasonable risk of harm to a child licensee. *Kosmalski v St John's Church*, 261 Mich App 56, 67; 680 NW2d 50 (2004). Neither of these cases alters the currently controlling precedent, which requires an objective analysis of whether a danger is open and obvious to a licensee.