

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CA07-298

December 19, 2007

KAREN POWELL

APPELLANT

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[CV-04-486]

V.

CENTERPOINT ENERGY ARKLA and
CRUMLEY COMPANY, INC.

APPELLEES

HON. JOHN S. PATTERSON,
CIRCUIT JUDGE

AFFIRMED

This appeal arises from a lawsuit filed by appellant Karen Powell after she sustained injuries when she fell into a hole while walking in a grassy area owned by Centerpoint Energy. On appeal, Powell argues that the trial court erroneously granted summary judgment in favor of Centerpoint and Crumley and asks us to reinstate her lawsuit. We decline to do so.

On October 7, 2003, Powell was walking her grandson across a utility easement to obtain a closer view of a train the two were watching. Before reaching their destination, Powell stepped into a hole and suffered various injuries. In her deposition, Powell admitted that she did not seek or secure permission to enter onto the easement. She filed suit against Centerpoint and the Crumley Company (who she claimed was doing work on the property), alleging that Centerpoint had directed that the hole be dug for utility-maintenance purposes

and that the condition of the hole breached Centerpoint’s “duty to maintain the area in a safe condition.”

After hearing from the parties, the trial court concluded that undisputed facts showed that Powell was a trespasser, and as such Centerpoint could only be liable if it breached the duty owed a trespasser. The court concluded that the facts demonstrated no such breach and granted summary judgment in Centerpoint/Crumley’s favor. It is from this decision that Powell appeals.

A trial court should only grant summary judgment when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law. *Castaneda v. Progressive Classic Ins. Co.*, 357 Ark. 345, 166 S.W.3d 556 (2004). Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Id.* On review, we determine if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of its motion leave a material fact unanswered, viewing the evidence in the light most favorable to the party resisting summary judgment. *Id.*

Here, there is no doubt—based on Powell’s own testimony—that she was a trespasser. As a matter of law, an owner or occupier¹ owes a trespasser no duty until her presence on

¹An easement is a property right and is entitled to all the constitutional safeguards afforded to other property rights. *Ark. State Highway Comm’n. v. Ark. Power & Light Co.*, 231 Ark. 307, 330 S.W.2d 77 (1959).

the premises is known; then the occupant owes the trespasser only a duty not to cause her injury by willful or wanton conduct. *Sw. Bell Tel. Co. v. Davis*, 247 Ark. 381, 445 S.W.2d 505 (1969). When asked in her deposition if the owners of the easement had any knowledge of her presence on the property, she responded: “I don’t think so.” This testimony alone established that Powell was an “unknown” trespasser, and as such no duty was owed.

Furthermore, assuming for purposes of argument that her presence was known, there was no evidence presented to establish any willful or wanton conduct on the part of Centerpoint. Therefore, the trial court’s grant of summary judgment in Centerpoint’s favor must stand.

Affirmed.

MARSHALL and MILLER, JJ., agree.