IN THE SUPREME COURT OF THE STATE OF DELAWARE

TRACY DURHAM, as Guardian	§	
of BRADFORD JORDAN	§	
HUSFELT, a minor,	§	
	§	
Plaintiff Below,	§	No. 592, 2000
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware in and
	§	for Kent County
DONALD LEDUC, an	§	C.A. NO. 99C-06-037
individual, and MARSHA LEDUC,	§	
an individual,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: July 24, 2001
Decided: August 9, 2001

Before **VEASEY**, Chief Justice, **WALSH**, **HOLLAND**, **BERGER**, and **STEELE,** Justices, constituting the Court *En Banc*.

O R D E R

This 9th day of August 2001, upon consideration of the briefs of the parties and oral argument, it appears to the Court that:

(1) This is an appeal from the grant of summary judgment in a civil action in the Superior Court initiated by the appellant, Tracy Durham ("Durham"), on behalf of her minor child, Bradford Jordan Husfelt ("Bradford"), for injuries sustained by Bradford while on the property of the appellees, Donald and Marsha

Leduc (the "Leducs"). The Superior Court ruled that Bradford was a social guest, not a business invitee, on the Leducs premises and, under the Delaware Premises Guest Statute, 25 *Del. C.* § 1501, could not recover under a claim of simple negligence.

(2) The underlying facts are not in dispute. Durham had arranged with her stepsister, Amy Kouse ("Kouse"), to care for Bradford and his brother while Durham was working. At the time, Bradford was three years of age. Durham paid Kouse $70 per week for this service. The ususal practice was for Durham to deliver the child to the Kouse residence. Occasionally, Kouse would take Bradford to the home of the Leducs who were the stepfather and mother of both Durham and Kouse. On the date of the accident, Marsha Leduc took Kouse, Bradford and his brother to the Leducs' home in order to visit and see Kouse's brother who was packing to leave for college. While Kouse was on the second floor of the residence using the telephone, Marsha Leduc remained on the first floor, supervising the children while the Leducs' 13 year-old daughter, Shannon, was mowing the grass using a riding lawnmower. Bradford asked Marsha Leduc if he could ride on the lawnmower. Leduc refused, but permitted Bradford to return outside. Bradford then approached Shannon, who was on the riding mower, and asked to ride on the mower. Shannon

also refused and she directed Bradford to go across the yard to a swing set. As Bradford crossed in front of the mower, Shannon's foot slipped from the brake pedal, causing the mower to lurch forward. The mower ran over Bradford's foot, seriously injuring him.

(3) Our standard of review from the grant of summary judgment is *de novo*, *i.e.*, we will determine anew whether the party moving for summary judgment was entitled to judgment as a matter of law on a record free of material factual disputes. *See Merrill v. Crothall-American, Inc.*, Del. Supr., 606 A.2d 96, 99 (1992). Durham contends that the Superior Court erred as a matter of law in ruling that her child was not a business invitee at the time of his injury, thus rendering the Leducs liable for claims based on simple negligence. In our view, this contention lacks a factual basis and the Superior Court ruling was clearly correct.

(4) Under the Delaware Premises Guest Statute, a person entering onto private residential premises "as a guest without payment" may not assert a cause of action against the owner of the premises for any injuries sustained by such person "unless such accident was intentional on the part of the owner or occupier or was caused by the wilful or wanton disregard of the rights of others." 25 *Del. C.* § 1501. In effect, and as construed by Delaware decisional law, a social guest or

visitor cannot recover for acts of simple negligence on the part of the premises owner. *See, e.g., Facciolo v. Facciolo Const. Co.*, Del. Supr., 317 A.2d 27 (1974). A child on the premises with the consent of the owner is considered a social guest and is subject to the limitations of the statute. *See, e.g., Urbanski v. Walker*, Del. Supr., 281 A.2d 491 (1971). Notwithstanding the bar of the premises statute, this Court has permitted a child trespasser to recover for injuries caused by an attractive nuisance on the premises. *See Porter v. Delmarva Power & Light Co.*, Del. Supr., 547 A.2d 124 (1988). But this Court has also ruled that a lawnmower does not constitute an attractive nuisance because it is not part of the premises. *See Fox v. Fox*, Del. Supr., 729 A.2d 825, 831 (1999).

(5) In order to avoid the force of the premises guest statute and the interpretive decisional law, the appellant advances two basic contentions: (i) that the child was not a social guest on the date in question because his parents had not given express permission to visit the Leduc home on that occasion; and, (ii) that the child was a business invitee because the Leducs received an "emotional benefit" from the child's presence. We find neither argument persuasive. The record in this case clearly reflects the parents' acquiescence in the babysitter's pattern of conduct in

taking the child to the home of their common parent. Express permission to do so on each occasion was neither contemplated by the parties nor required by law.

(6) Durham's contention that an "emotional benefit" to the premises owner is sufficient to confer business invitee status on the child is a strained construction of the status of a business invitee. A business invitee is generally defined as "'a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.'" *DiOssi v. Maroney*, Del. Supr., 548 A.2d 1361, 1366 (1988) (quoting RESTATEMENT (SECOND) OF TORTS § 332 (1964)). It is clear on this record that while Kouse received a direct financial benefit for caring for the children, their presence on the Leduc property was fortuitous and not related to any "business dealings" of the Leducs. While Marsha Leduc may have assumed responsibility for the welfare of the child and was thus arguably liable under the standard announced in comment e to § 332 of the Restatement, *see* RESTATEMENT (SECOND) OF TORTS § 332 cmt. e (1964), that conduct constitutes simple negligence, a standard not sufficient to avoid the bar of the premises guest statute. *See* 25 *Del. C.* § 1501.

(7) We conclude that the Superior Court correctly determined that the child's status at the time of the injury was that of a social guest. In the absence of

an allegation that he was injured as a result of “wilful or wanton” conduct on the part of the Leducs as the premises owner, his claim is barred by the premises guest statute and the Superior Court did not err in granting summary judgment.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice