STATE OF MICHIGAN

COURT OF APPEALS

EDWARD VELLIQUETTE,

Plaintiff-Appellant.

v

DANA MCCORMICK and MARGARET MCCORMICK,

Defendants-Appellees.

UNPUBLISHED
March 31, 1998

No. 192097
Oakland Circuit Court
LC No. 95-491191 NO

Before: Fitzgerald, P.J., and Markey and J.B. Sullivan*, J.J.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendants under MCR 2.116(C)(10). We reverse and remand.

Plaintiff served as a baby-sitter, spending each day at defendants' home with his grandchildren, defendants' children. Plaintiff received a small stipend to help cover his related expenses. After a day of caring for the children, plaintiff remained at defendants' home for several hours to have dinner and watch television. When plaintiff left the house around 9:00 p.m., he slipped and fell on ice at the bottom of the driveway. Plaintiff sued, alleging five theories of negligence: failure to warn, failure to maintain the premises, failure to keep the area free of hazards, failure to remove snow and ice, and failure to maintain adequate lighting.

The duty owed by a landowner depends upon the status of the injured party at the time of the injury. *Doran v Combs*, 135 Mich App 492, 495; 354 NW2d 804 (1984). A landowner's duty to an invitee is broader than that owned to a licensee. *Id*. at 496. A social guest, however cordially invited and urged to come, is no more than a licensee. *Wymer v Holmes*, 429 Mich 66, 71 n 1; 412 NW2d 213 (1987). An invitee includes family members who are on the premises predominately for the benefit of the landowner, as opposed to for social purposes. *Doran, supra* at 496. Whether someone is an invitee or a licensee on another's property may be a question of fact where persons of average intelligence can disagree over whether the guest is on the property for a social purpose or to render a

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

service beneficial to the owner of the property. *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993).

In this case, there is no question of fact regarding plaintiff's status. As a matter of law, plaintiff was an invitee as his presence on defendants' premises was primarily a service to defendants. *Doran, supra* at 497; *Leveque v Leveque*, 41 Mich App 127, 132; 199 NW2d 675 (1972). See also *Lundy v Groty*, 141 Mich App 757, 759; 367 NW2d 448 (1985). A landowner is required to take reasonable measures within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to an invitee. *Quinlivan v The Great Atlantic & Pacific Tea Co*, 395 Mich 244, 261; 235 NW2d 732 (1975). Further, even if the danger was open and obvious, defendants would still have the duty to take reasonable precautions if the risk of falling was not eliminated by the awareness of the hazard. *Hottmann v Hottmann*, 226 Mich App 171, 176; ___ NW2d ___ (1997). Whether defendants' actions fulfilled their obligation is a question of fact for the jury. *Id.*; *Lundy, supra at* 760-761. See also *Beals v Walker*, 416 Mich 469, 480-481; 331 NW2d 700 (1982). Accordingly, the trial court erred in granting summary disposition in favor of defendants.

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

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Joseph B. Sullivan