STATE OF MICHIGAN

COURT OF APPEALS

JOHN KNITTER, II,

Plaintiff-Appellant,

v

KEVIN KELLY,

Defendant-Appellee.

UNPUBLISHED
March 19, 1999

No. 204597
Benzie Circuit Court
LC No. 96-004818 NO

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition pursuant to MCR 2.116(C)(10). The trial court ruled that the ice covering a parking area at defendant's home was open and obvious as a matter of law, and therefore that defendant had not breached any duty to plaintiff, who slipped and fell in the parking area. We affirm the decision of the trial court, but on a different basis. *Lane v Kindercare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998) ("this Court will not reverse where the trial court reached the right result for the wrong reason").

Plaintiff argues that he established that he fell on the ice and snow without having had the opportunity to observe the dangerous condition, that defendant failed to take measures to warn or make safe the condition, and that the trial court therefore erred in ruling that the open and obvious danger doctrine barred the claim. This Court reviews a trial court's grant or denial of a motion for summary disposition de novo. *Carlyon v Mutual of Omaha Ins Co*, 220 Mich App 444, 446; 559 NW2d 407 (1996). In reviewing this motion brought pursuant to MCR 2.116(C)(10), we must consider all documentary evidence in a light most favorable to plaintiff in order to determine whether there is a genuine issue with respect to any material fact and whether defendant was entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

In basing its ruling on the open and obvious danger doctrine, the trial court assumed for purposes of disposition that plaintiff was an invitee. Plaintiff's status as an invitee or licensee is a question of law if there are no factual disputes concerning plaintiff's purpose for being on defendant's premises. *Stitt v Holland Abundant Life Fellowship*, 229 Mich App 504, 505; 582 NW2d 849 (1998). Taking all evidence in the light most favorable to plaintiff, we conclude that there is no genuine

issue as to plaintiff's purpose for being on defendant's premises on the day of the accident; no rational factfinder could conclude he was an invitee.

A licensee is a person who enters the premises of another with the express or implied permission of the owner. *Leep v McComber*, 118 Mich App 653, 658; 325 NW2d 531 (1982). Generally, social guests, even if invited onto the land of the owner, are not invitees because their visits are not related to the pecuniary interest of the possessor nor do they perform services beneficial to the owner. *Preston v Sleziak*, 383 Mich 442, 449-452; 175 NW2d 759 (1970)*; Stanley v Town Square Cooperative*, 203 Mich App 143, 147; 512 NW2d 51 (1993); *Berry v J & D Auto Dismantlers, Inc*, 195 Mich App 476, 479-480; 491 NW2d 585 (1992). The Michigan precedent most closely similar factually to this case is *Berry, supra*. The plaintiff there was a mechanic who frequently bought parts from the defendant junkyard and who, on occasion, was allowed to remove parts for free. *Id*. at 478. On the day of his accident, the plaintiff went to the yard and told the owner he had no money that day, but needed a battery cable. The owner allowed him to search for the cable in the cars stored at the yard. During that search, the plaintiff was fatally injured. This Court reasoned that, because the plaintiff was not going to pay for the cable, his presence on the land on the day of the accident was of no benefit to the landowner and he was a licensee. *Id*. at 480. This reasoning applied even though, arguably, the plaintiff's visit was part of a continuing business relationship with the defendant wherein sometimes parts would be purchased and other times they would be provided free of charge.

In the instant case, plaintiff testified that he went to the home of defendant, from whom he had rented a room for about a month a few months earlier, to pick up some clothing items he had left when he moved out. Plaintiff later told an insurance investigator that this was a social visit. Similarly, he testified in his deposition that he would call defendant "most every time" he was in the area and that, following the accident, he stayed at defendant's house for about three hours and they shared a beer.

Nonetheless, plaintiff argues that this visit conferred a benefit on defendant because it was intended to free up space that defendant could then have rented to someone else, and that plaintiff was therefore an invitee entitled to the highest standard of care. Assuming for purposes of this analysis that plaintiff was on defendant's land solely to pick up items he had left behind, there was insufficient evidence to create a question of fact as to whether defendant received any pecuniary or other significant benefit from that act. The evidence shows only that defendant would occasionally allow a friend to rent a room, not that he was a "landlord" with space dedicated for rental. There is nothing to suggest that defendant wanted to again rent the space where plaintiff's clothing had been left. Even if there was such evidence, there is nothing to suggest that defendant was precluded from moving the clothing items from that space himself in order to accommodate a new tenant. In the absence of evidence to show a pecuniary benefit to defendant, plaintiff must be deemed a licensee.

This Court has ruled that the duty to a licensee does not include an obligation to remedy a natural accumulation of snow or ice. *Morrow v Boldt*, 203 Mich App 324, 327; 512 NW2d 83 (1994); *Hall v Detroit Bd of Ed*, 186 Mich App 469, 471; 465 NW2d 12 (1990). However, there are two exceptions to this rule. The first exception provides that liability to a licensee may attach where the property owner has taken affirmative action to alter the natural accumulation of ice and snow and, in

doing so, increases the hazard of travel. *Morrow, supra; Hall, supra.* The second exception provides that liability may arise where a party takes affirmative steps to alter the condition of the sidewalk or driveway itself, which in turn causes an unnatural or artificial accumulation of ice. *Hall, supra.* Plaintiff neither alleges nor argues that defendant had increased the hazard by taking some steps to alter the ice or that he created an unnatural accumulation by altering the parking area on which plaintiff fell. Rather, plaintiff was a licensee who slipped on a natural accumulation of ice in defendant's parking area. Therefore, defendant has no liability for plaintiff's injuries.

We affirm.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Richard A. Bandstra