STATE OF MICHIGAN

COURT OF APPEALS

ROBERT G. HILGER and
GAY E. HILGER,

Plaintiffs-Appellants,

v

EDITH M. LAWRENCE and the
EDITH M. LAWRENCE TRUST,

Defendants-Appellees.

UNPUBLISHED
September 7, 1999

No. 206103
Wayne Circuit Court
LC No. 95-528053 NI

Before: Zahra, P.J., and Saad and Collins, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm. We review a trial court's decision to grant or deny a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiffs argue that the trial court erred in granting defendants' motion for summary disposition pursuant to the volunteer doctrine. In *Ryder Truck Rental v Urbane*, 228 Mich App 519, 522; 579 NW2d 425 (1998), this Court ruled that the volunteer doctrine is restricted solely to actions involving respondeat superior liability and thus, the volunteer doctrine is not applicable premises liability actions.[1] We are bound by the precedent set in *Ryder, supra* pursuant to MCR 7.215(H). Therefore, we conclude that the trial court erred in finding that the volunteer doctrine was applicable in this case.

Nonetheless, we conclude that the trial court properly granted summary disposition to defendants because plaintiffs failed to present evidence to sustain a prima facie case of premises liability.[2] Assuming plaintiff Robert Hilger was an invitee, plaintiff would have to present evidence of a dangerous condition on the land that the defendant knew or should have known that plaintiff would not discover, realize, or protect himself against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). The mere occurrence of an accident is not enough to raise a legitimate inference of negligence. *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206(1977). There must be proof

that a dangerous condition existed and defendant knew or should have known of its existence. *Bertrand, supra* at 609.

Plaintiff Robert Hilger testified that while he was mowing the weeds in Lot #3 of defendant's property, the tractor tipped to the left which caused him to fall partially off the tractor sustaining injuries to his left knee. Hilger never identified what caused the tractor to tip. Several months after the accident Hilger went back to Lot #3 and discovered a log that appeared to have been cut down lying in the area where the accident occurred.[3] Plaintiff never saw the log on the day of the accident, nor was there any other evidence or testimony to establish that the log plaintiff observed months after the fact was, in fact, what caused the tractor to tip to the left. Significantly, Hilger testified that he had mowed Lot #3 two or three times between 1992 and 1994 after defendant's husband died and never observed the log previously.[4] Additionally, defendant was in no position to know if there was a dangerous condition on Lot #3 because she relied upon plaintiff and his sons to take care of Lot #3 for her. Although defendant testified that she knew her husband had placed wood at the rear of Lot #3 while he was alive, the accident occurred in a different area of the lot more than three years after plaintiff began mowing the property. Thus, defendant's purported knowledge of the dangerous condition is not supported by the facts.

For the reasons stated above, we find that summary disposition for defendants was properly granted.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Jeffrey G. Collins

[1] In *Ryder Truck Rental v Urbane*, 228 Mich App 519, 526-533; 579 NW2d 425 (1998), Justice Corrigan, then Chief Judge of this Court, wrote a concurring opinion rejecting the majority view that the volunteer doctrine is restricted to actions involving respondeat superior liability. Justice Corrigan explained that the volunteer doctrine should turn upon whether the putative master extended to the putative volunteer an invitation to act. If the plaintiff's conduct is in response to an invitation to act, then the volunteer doctrine does not apply. As Justice Corrigan explained:

> "The volunteer doctrine . . . is founded on the notion that no duty of ordinary care arises between a master and a volunteer because the master never agreed to enter into something akin to an employment relationship with the volunteer, *i.e.*, the master did not invite the volunteer to act. When the master invites the volunteer to act, whether gratuitously or not, application of the volunteer doctrine would not further this underlying rationale. *Ryder, supra* at 532-533, n2.

We agree with the well reasoned opinion of Justice Corrigan. We would declare a conflict with *Ryder, supra*, pursuant to MCR 7.215 (H)(3) but for the fact that *Ryder* is not determinative of the outcome in this case.

[2] We find no merit in plaintiffs' argument that this Court should not consider whether there was sufficient evidence to establish a prima facie case of premises liability. Even though the trial court did not specifically rule on this issue and decided the motion on an alternative theory of law, this issue was briefed and argued before the trial court. Since we review motions for summary disposition de novo, it is well within this Court's authority to find that the trial court reached the right result for a different reason.

[3] Hilger cannot specify when he went back out to Lot #3 and observed the log on the ground. First, he testified it was weeks after the accident and then he said it could have been sometime in 1995 (the accident occurred on August 15, 1994). Unlike the plaintiff in *Andrew v K Mart Corp*, 181 Mich App 666, 669; 405 NW2d 27 (1989), who observed the defect in the rug immediately after she tripped and fell, Hilger never saw what caused the tractor to tip on the day of the accident and did not observe the alleged log until an unspecified number of weeks or months after the accident.

[4] The fact that Hilger previously mowed the lot subsequent to defendant's husband's death places Hilger in a catch-22. If, as defendant indicated, her husband placed wood on Lot #3 while he was alive, Hilger should have known of the log by virtue of his prior experiences. On the other hand, if the log was placed on the property sometime after Hilger had last mowed the lot, then he has failed to establish that defendant knew or should have known of this log.