

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD O. FISHER and CHARLENE K.
FISHER,

UNPUBLISHED
April 21, 2000

Plaintiffs-Appellants,

v

No. 215702
Huron Circuit Court
LC No. 96-009931-NI

CASEVILLE CHAMBER OF COMMERCE and
MARK WAYNE MORELAND,

Defendants,

and

GERRY'S DISTRIBUTING COMPANY,

Defendant-Appellee.

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order dismissing their premises liability action after summary disposition was granted to Gerry's Distributing Company. We affirm.

Richard Fisher was injured when he fell while working as a volunteer bartender at the Shanty Days festival, sponsored by the Caseville Chamber of Commerce. The event was held on frozen Wildfowl Bay, and the beer tent was set up on the ice. Gerry's Distributing Company supplied beer for the event, and several of its employees were working at the beer tent as volunteers. Plaintiffs asserted that Gerry's Distributing was an invitor because it operated the beer tent and received an economic benefit from the festival.

To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff; (2) breach of that duty; (3) causation, and (4) damages. *Berryman v K Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). An invitor owes a duty to its invitees to exercise ordinary care to provide reasonably safe premises, although it need not

warn of open and obvious dangers. *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995). A claim based on premises liability is conditioned upon the presence of both possession and control over the land. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660; 575 NW2d 745 (1998). Liability depends upon the power to prevent the injury. *Id.*, 662.

The trial court properly granted summary disposition where plaintiff failed to show that defendant owed him a duty. The Chamber of Commerce was the sponsor of the festival and was in control of the premises. There was no showing that defendant had possession and control over the land, thus plaintiff could not prevail on a premises liability theory.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski