STATE OF MICHIGAN

COURT OF APPEALS

ALICE HALE,

Plaintiff-Appellant,

v

KENNETH GRIMM,

Defendant-Appellee.

UNPUBLISHED
December 26, 2000

No. 215801
Oakland Circuit Court
LC No. 97-001196-NO

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116 (C)(10). We affirm.

Plaintiff filed suit against defendant, her ex-husband, to recover for personal injuries under a negligence theory. Plaintiff had made her weekly Sunday visit at defendant's home, where she spent the day with him. When plaintiff was leaving for work early the next morning, she slipped and fell on black ice that had accumulated in defendant's driveway and suffered a broken wrist. Dismissing plaintiff's claim, the trial court granted defendant's motion for summary disposition holding first that defendant owed no duty to plaintiff, as a licensee, to salt the naturally accumulated ice on the driveway of defendant's home, and second that defendant had not voluntarily assumed the duty to salt where a duty did not otherwise exist. While we do not agree that the natural accumulation doctrine bars plaintiff's claim, we affirm the trial court's order on other grounds.

On appeal, plaintiff contends that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because plaintiff was an invitee on defendant's property at the time of her injury. We disagree. Appellate review of the grant or denial of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must determine whether any genuine issue of material fact exists in order to prevent entering a judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). We review the entire record in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party. *Id.*

"To establish a prima facie case of negligence, the plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages." *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). Plaintiff argues that the trial court erred in granting summary disposition when it determined that plaintiff's status on defendant's property at the time of her injury was that of a licensee to whom no duty was owed to remove the ice from the driveway.

We first note that the reliance by defendant and the trial court on the natural accumulation doctrine as a bar to plaintiff's claim was misplaced. The natural accumulation doctrine has recently been held not to apply to the licensor-licensee context where the injury occurred on the possessor's private property and a trial court's grant of summary disposition on that basis is improper. *Altairi v Alhaj*, 235 Mich App 626, 638; 599 NW2d 537 (1999). *Altairi* clarified the scope of the natural accumulation doctrine. The *Altairi* Court indicated that the natural accumulation doctrine was never meant to apply to injuries on private property because used in such circumstances it would abrogate a private possessor's duty to licensees on his property. *Id.* at 629. Rather, "[c]ourts have consistently applied the doctrine to shield private possessors from liability stemming from the natural accumulation from ice and snow on public sidewalks that abut their property." *Id.* Accordingly, instead of analyzing plaintiff's claim under the natural accumulation doctrine, we will apply the common law duties for landowners provided by premises liability law.

The first issue to be resolved is whether plaintiff was properly classified as a licensee. A landowner's duty to a visitor depends on that visitor's status. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Even though a social guest is invited, she stands in the legal relationship to her host of a licensee. *Leveque v Leveque*, 41 Mich App 127, 129-130; 199 NW2d 675 (1972). Meanwhile, invitee status is typically afforded persons entering upon the property of another for a purpose connected with a business, or to confer a business, commercial, monetary, or other tangible benefit to the occupant. *Id.* at 130.

In the present case, plaintiff argues that she was an invitee on defendant's property because she did defendant's laundry and housework, from which defendant received a benefit. However, whether a social guest who renders a benefit should be classified as a licensee or an invitee is sometimes difficult to determine. A family member or personal friend rendering help in household tasks to another does not cease to be a licensee unless the circumstances of the assistance make it clearly the dominant aspect of the relationship rather than a routine incident of a social activity. *Id.* at 131. "The critical factor involved is to determine whether the benefit conferred is the dominant aspect of the visit, or, alternatively, is the 'routine incident of social or group activities'." *Id.*

In most instances the determination of whether a social guest who renders assistance to the occupant of the premise is deemed an invitee or a licensee will be a question of fact. *Id.* In this case, however, the trial court was justified in concluding that the only inference to be drawn from the uncontradicted facts presented was that the predominant purpose of plaintiff's visit was social, and that the housework services rendered were merely incidental to such purpose. Id. Plaintiff and defendant had remained friends during the ten years since their divorce, with

plaintiff visiting defendant every weekend for the two years prior to this incident. On the day of the accident plaintiff spent all day with defendant. In the evening they had dinner together, watched television and went to bed. During the day plaintiff did their laundry and cleaned up the house a little bit, something she always did during her visits at defendant's home. However, plaintiff's act of doing defendant's laundry and housework was neither the dominant aspect of their relationship nor the dominant aspect of this particular visit. Any benefit conferred to defendant was incidental to the dominant social purpose of plaintiff's visit. The trial court correctly held that that plaintiff was a licensee on defendant's property at the time of her injury.

Because plaintiff enjoyed the status of a licensee on defendant's property at the time she was injured, and because we hold that as a licensee plaintiff's claim is not barred by the natural accumulation doctrine, defendant still owed plaintiff a marginal duty of care. See *Altairi, supra* at 634. We conclude, however, there was no breach of that duty because plaintiff has failed to establish that there was a genuine issue of fact regarding whether defendant knew or had reason to know that there was ice on the driveway.

As a licensor, defendant could only be liable for dangers he knew or had reason to know of, if the licensee did not know or have reason to know of the dangers involved. *Stitt, supra* at 596. Defendant had no obligation to inspect the driveway to protect plaintiff, a licensee, from unknown dangers. *D'Ambrosio v McCready*, 225 Mich App 90, 94-96; 570 NW2d 797 (1997). Knowledge implies not only knowledge of the dangerous condition, but also that the chance of harm and the gravity of the threatened harm are appreciated. *Altairi, supra* at 639. However, a landowner owes no duty if the danger is open and obvious. Thus, the landowner must know of the danger or have reason to know, while at the same time the danger cannot be open an obvious. As a result of such a narrow class of risks, "[a]ny danger that is not obvious is not likely to be known to the landowner." *Id.*

Plaintiff claimed that she fell on black ice in defendant's driveway that accumulated as a result of icy weather conditions. The proper inquiry is whether defendant knew or had reason to know of this dangerous condition. Plaintiff has offered no evidence that defendant actually saw the ice on the driveway, or used the driveway prior to plaintiff's injury. From the record, it appears that defendant was asleep in bed at the time the ice formed on the driveway and did not become aware of the black ice until after plaintiff fell. On the basis of the evidence presented, there is no genuine issue of material fact that defendant breached any duty owed to plaintiff as a licensee. Therefore, the trial court did not err in granting defendant's motion for summary disposition and we affirm the trial court's order, though on different grounds than those articulated by the trial court. See *Anderson v Wiegand*, 223 Mich App 549, 556; 567 NW2d 452 (1997).

Plaintiff additionally contends that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because defendant voluntarily assumed the duty to salt and breached that duty when he failed to do so. We again disagree.

A party may be under a legal duty when it voluntarily assumes a function it is not legally required to perform. *Zychowski v A J Marshall Co, Inc*, 233 Mich App 229, 231; 590 NW2d 301 (1998). Once that duty is voluntarily assumed, it must be performed with some degree of skill and care; the party cannot omit to do what an ordinarily prudent person would do in

accomplishing the task. *Id.*; see also *Babula*, *supra* at 51. In this case, plaintiff claims that defendant assumed the duty to salt when, after hearing a weather report, he made the statement, "I should probably salt," and then got up and left the room. However, the record reflects that defendant did not salt or even attempt to salt the driveway before plaintiff's injury. Instead, it appears that defendant went to bed after making the comment. *Zychowski* holds that some affirmative action on the part of the defendant needs to be found before a party can be said to have voluntarily assumed a duty. *Zychowski, supra* at 231-232. In the present case, in the absence of any affirmative conduct by defendant to salt the driveway, defendant was under no legal duty to salt where such a duty did not otherwise exist under the law.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy