STATE OF MICHIGAN

COURT OF APPEALS

CARMELO LOPIPARO,

Plaintiff-Appellee,

v

WILBUR A. LETTINGA, VERNE P. LETTINGA, JOHN DENHARTIGH, PETER DENHARTIGH, ARNOLD P. BORDEWYK, ALLAN VANPOPERING, and CARL WORKMAN, d/b/a DUTTON MILL VILLAGE MOBILE HOME PARK,

Defendants-Appellants,

and

Estate of ERIC ZYLEMA, Deceased,

Defendant.

UNPUBLISHED
December 13, 2002

No. 230080
Kent Circuit Court
LC No. 96-011034-NO

Before: Wilder, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

In this slip and fall action, defendants Wilbur A. Lettinga, Verne P. Lettinga, John Denhartigh, Peter Denhartigh, Arnold P. Bordewyk, Allan Vanpopering, and Carl Workman, owners of and collectively doing business as Dutton Mill Village Mobile Home Park (defendants), appeal by right the jury verdict and judgment of $78,165.61 entered against them in favor of plaintiff Carmelo LoPiparo. We reverse and remand for entry of judgment in favor of defendants.

I. Facts

Plaintiff, the owner and operator of Carmelo's Pizzeria, was on a pizza delivery to the mobile home trailer owned by Eric Zylema in defendant mobile home park. Plaintiff parked his vehicle on the street, walked onto Zylema's driveway pad and between two vehicles parked on the pad, and was turning onto the sidewalk approaching Zylema's trailer when he slipped and fell. Plaintiff testified that he did not know if there was ice on the driveway pad between the two vehicles, but that he could see some "clear ice" on the driveway pavement after he fell.

Plaintiff filed this premises liability action against defendants, contending that defendants were liable for his injuries because they negligently failed to remove snow and ice from the premises which they owned, controlled, and maintained. Defendants denied any negligence and asserted that pursuant to the mobile home park's snow removal regulation, removing snow and ice removal was Zylema's responsibility. The snow removal regulation at issue provided as follows:

> Snow removal on the Resident's rented property is the resident's responsibility. Snow and ice are to be removed from all sidewalks, steps and patios on the home site. Snow is not to be shoveled or blown back into the streets. If this responsibility is neglected, Management may do so at the Resident's expense.

At the close of plaintiff's proofs at trial, defendants moved for directed verdict arguing, inter alia, that they owed no duty to plaintiff and that plaintiff had presented insufficient evidence to establish that defendants' conduct was the proximate cause of plaintiff's injuries. The trial court denied defendants' motion for directed verdict and the case proceeded to a jury verdict for the plaintiff. On appeal, defendants contend that the trial court erred in denying their motion for directed verdict, first, by concluding as a matter of law that defendants owed a duty to plaintiff to remove ice and snow from the premises of the mobile home park and, second, by finding that plaintiff introduced sufficient evidence that defendants' conduct proximately caused plaintiff's injuries to permit the case to be submitted to the jury.

II. Standard of Review

This Court reviews de novo the trial court's order granting or denying a motion for directed verdict. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). The trial court's determination that defendants owed a duty to plaintiff, as a question of law, is also subject to de novo review on appeal. *Meek v Dep't of Transportation*, 240 Mich App 105, 110; 610 NW2d 250 (2000).

III. Analysis

We agree with defendants that they could not be found negligent because they owed no duty of care to plaintiff and that, accordingly, the trial court erred in denying defendants' motion for directed verdict. A prima facie case of negligence requires proof of four elements: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Where there is no duty, there can be no negligence. *Flones v Dalman*, 199 Mich App 396, 403; 502 NW2d 725 (1993).

In order for a plaintiff to prevail on a theory of premises liability, plaintiff must establish that the defendant had possession and control of the premises. *Orel v Uni-Rak Sales Co*, 454 Mich 564, 568; 563 NW2d 241 (1997). "'[P]remises liability is conditioned upon the presence of both possession and control over the land' because the person having such possession and control is 'normally best able to prevent . . . harm to others.'" *Derbabian v S&C Snowplowing, Inc*, 249 Mich App 695, 705; 644 NW2d 799 (2002). "Ownership alone is not dispositive" on this question, *Orel*, *supra* at 568, because possession and control rights can be "loaned" to

another, "thereby conferring the duty to make the premises safe while simultaneously absolving oneself of responsibility." *Id.*

In the present case, possession and control of the premises rested with Zylema pursuant to the snow removal regulation. The trial court erred by finding that the regulation language, which reserved defendants' right to exercise possession and control of the premises to conduct snow and ice removal in the event the tenants neglected the responsibility, required concluding that defendants still retained the "ultimate responsibility" for removal of ice and snow from the premises because they were the "ultimate possessor[s]" of the premises. "[P]ossession for purposes of premises liability does not turn on a theoretical or impending right of possession, but instead depends on the actual exercise of dominion and control over the property." *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 661; 575 NW2d 745 (1998). Here, it is clear from the snow removal regulation that defendant "loaned" possession and control for purposes of snow and ice removal to Zylema as a tenant, and there is no evidence on the record that defendants actually or attempted to exert possession and control over the property by engaging in snow and ice removal consistent with their retained option to do so.

Because defendants "loaned" possession and control of the premises for purposes of snow and ice removal to their tenants, Zylema, rather than defendants, owed a duty to plaintiff as an invitee to maintain the premises in a safe manner. *Orel*, *supra* at 568. Accordingly, the trial court erred as a matter of law in finding that defendants owed a duty of care to plaintiff. Since defendants owed no duty to plaintiff, as a matter of law defendants were not negligent and were entitled to a directed verdict at the close of plaintiff's proofs. *Flones*, *supra* at 403.

Having concluded that defendants were entitled to a directed verdict on the basis that they owed no duty to plaintiff, we need not address the remaining issues before us on appeal.

Reversed and remanded for entry of judgment in favor of defendants. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra