Circuit Court for Baltimore City
Case No. 24-C-19-003646

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 636

September Term, 2020

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PERONICA FLEMING

V.

MAMIE SCOTT

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Fader, C.J.,
Reed,
Beachley,

JJ.

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Opinion by Fader, C.J.

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Filed: May 3, 2021

Peronica Fleming, the appellant, brought this lawsuit against Mamie Scott, the appellee, seeking damages for injuries she suffered after falling on Ms. Scott's property. At the time she fell, Ms. Fleming was returning a knife that she had borrowed from Ms. Scott earlier that day. The Circuit Court for Baltimore City determined that at the time of the incident, Ms. Fleming was a bare licensee to whom Ms. Scott did not owe any heightened duty of care. Based on that conclusion, the court awarded summary judgment in favor of Ms. Scott. On appeal, Ms. Fleming contends that the court erred in determining that she was a bare licensee. Because we agree with the circuit court, we will affirm.

## BACKGROUND[1]

Ms. Fleming and Ms. Scott are neighbors. On October 26, 2017, Ms. Fleming arrived home from work, was unable to open her front door, and walked over to Ms. Scott's house to borrow a knife to assist her in forcing the door open. Kenyon Kinard, Ms. Scott's grandson, answered the door, retrieved a metal butter knife from the kitchen, and lent it to Ms. Fleming. Ms. Fleming told Mr. Kinard that she would return the knife, and returned to her home, where she used the knife to unjam her door. Later that day, Ms. Fleming returned to Ms. Scott's house to return the knife. After handing the knife to Mr. Kinard and turning to leave down the staircase descending from the home's porch, Ms. Fleming lost her balance and fell, suffering serious injuries to her leg.

[1] Our recitation of these facts reflects that in reviewing a grant of summary judgment, we view the facts "in the light most favorable to the non-moving party[.]" *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020).

Ms. Fleming's complaint alleged that her injuries were caused by Ms. Scott's negligent maintenance of the premises. In June 2020, Ms. Scott filed a motion for summary judgment in which she argued that the undisputed material facts established that Ms. Fleming was a bare licensee and Ms. Scott had not breached any duties owed to a bare licensee. In July 2020, following a hearing, the court granted the motion for summary judgment. The court concluded that the material facts were not subject to genuine dispute and that: (1) Ms. Fleming was not an invitee or a licensee by invitation because she had entered Ms. Scott's property of her own volition and for her own purposes; (2) Ms. Fleming was therefore a bare licensee; and (3) Ms. Scott had not breached the duty she owed to a bare licensee. This timely appeal followed.

## DISCUSSION

"We review the circuit court's grant of summary judgment without deference." *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 312 (2019). We first must ascertain if there are any disputes of material facts. *Id*. at 313. When the material facts surrounding a premises liability case are not in dispute, a court may resolve the case on summary judgment. *Id*. The legal status of an entrant is a question of law, which we review without deference. *Id*. at 312, 315.

The sole issue Ms. Fleming raises on appeal is whether the circuit court erred in determining that her legal status at the time of her injury was that of a bare licensee. Discerning no error, we will affirm.

## I. AN ENTRANT ONTO PRIVATE PROPERTY WITH THE CONSENT OF THE OWNER FOR A NON-SOCIAL PURPOSE IS A BARE LICENSEE.

As recently summarized by this Court:

> Premises liability is based on common-law principles of negligence, *see Troxel* [*v. Iguana Cantina, LLC*], 201 Md. App. [476,] 493 [(2011)], so a plaintiff must establish the four elements required in any negligence action:
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> > (1) that the defendant was under a duty to protect the plaintiff from injury, (2) *that the defendant breached that duty*, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.
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> *Joseph v. Bozzuto Mgmt., Co.*, 173 Md. App. 305, 314 (2007) (emphasis in original) (internal quotations and citations omitted). The burden is on the plaintiff to prove each of these elements. . . .
>
> Although grounded in common-law principles, the analysis we must undertake in premises-liability cases is distinct from other classes of negligence at the outset because the duty owed by the possessor or owner of property to a person injured on the property is determined by the entrant's legal status at the time of the incident. We apply the general common-law classifications of invitee, social guest (or licensee by invitation), and trespasser (or bare licensee). [T]hese classifications have their own subclasses but, in general, the highest duty is owed to invitees; namely, the duty to "use reasonable and ordinary care to keep the premises safe for the invitee and to protect the invitee from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for the invitee's own safety will not discover." At the bottom rung are trespassers and bare licensees, to whom is owed no more than to "abstain from willful or wanton misconduct or entrapment."

*Macias*, 243 Md. App. at 316-17 (footnotes and some internal citations removed).

The first and highest duty of care is that owed to an invitee. *Id.* at 322. "An entrant may establish invitee status under two theories: (1) mutual benefit or (2) implied invitation." *Id.* The mutual benefit theory predicates liability on a finding that the purpose of the entrant's visit was "for the mutual benefit of owner and visitor[.]" *Woodward v.*

*Newstein*, 37 Md. App. 285, 292 (1977). The key inquiry in determining whether an entrant is an invitee under the mutual benefit theory is whether the entrant subjectively intended to benefit the property owner. *Crown Cork & Seal Co. v. Kane*, 213 Md. 152, 159 (1957); *Wells v. Polland*, 120 Md. App. 699, 710 (1998). The implied invitation theory, on the other hand, is "objective and does not rely on any mutual benefit" between the entrant and the property owner. *Wells*, 120 Md. App. at 710-11. To determine whether there was an implied invitation, a court will inspect the circumstances surrounding an entrance onto a premises, such as custom, habitual acquiescence of the owner, the apparent holding out of the premises for use by the public, or the general arrangement or appearance of the premises. *See Deboy v. City of Crisfeld*, 167 Md. App. 548, 555 (2006). "The crux of the implied invitation theory is the distinction between mere acquiescence and direct or implied inducement." *Howard County Bd. of Educ. v. Cheyne*, 99 Md. App. 150, 165 (1994).

A property owner owes an invitee the "duty to exercise reasonable care to 'protect the invitee from injury caused by an unreasonable risk' that the invitee would be unlikely to perceive in the exercise of ordinary care . . . and about which the owner knows or could have discovered in the exercise of reasonable care." *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 388 (1997) (quoting *Casper v. Charles F. Smith & Son, Inc.*, 316 Md. 573, 582 (1989)). An invitee is "entitled to expect that [her] host will make far greater preparation to secure the safety of [her] patrons than a householder will make for his social or even his business visitors." *Macias*, 243 Md. App. at 322 (first alteration in *Macias*) (quoting *Moore v. Am. Stores Co.*, 169 Md. 541, 547 (1936)).

The second and intermediate duty of care is that owed to licensees by invitation, also referred to as a social guest. *See Macias*, 243 Md. App. at 321. A licensee by invitation is a person who enters a property by the consent of the owner for the purpose of a social visit. *See Bramble v. Thompson*, 264 Md. 518, 521 (1972); *Kight v. Bowman*, 25 Md. App. 225, 229-30 (1975). Although a licensee by invitation "enters a premises at the express or implied invitation of the host," the licensee is "not an invitee in a legal sense[.]" *Paquin v. McGinnis*, 246 Md. 569, 572 (1967); *see also Laser v. Wilson*, 58 Md. App. 434, 442 (1984) ("Maryland has clearly turned a deaf ear to the social siren song sung by some law review writers . . . that social guests be treated as invitees rather than licensees."). "A licensee by invitation . . . takes the premises as [the] host uses them." *Bramble*, 264 Md. at 521. The host thus must "take the same care of the guest as the host takes of [the host] or members of [the host's] family." *Id.* That is, the host "must exercise reasonable care to make the premises safe for [the] guest or [the host] must warn [the guest] of known dangerous conditions that cannot reasonably be discovered and which in fact are not discovered by the guest." *Id.* at 521-22.

The third and lowest duty of care applies to bare licensees and trespassers. A trespasser enters a property without privilege or the consent of an owner. *See Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 689 (1998). A bare licensee is an individual who enters a property (1) with the owner's consent, (2) for the entrant's own purpose and convenience, and (3) not for the purposes of a social visit. *See Mech v. Hearst Corp.*, 64 Md. App. 422, 426 (1985). Both bare licensees and trespassers "take[] the property as [they] find[] it" and are "owed no duty by the owner except that [they] may not be

wil[l]fully or wantonly injured or entrapped by the owner once [their] presence is known." *Bramble*, 264 Md. at 521.

Acquiescence to an individual's entry on property does not confer status as an invitee or licensee by invitation on an entrant. Rather, "[a]cquiescence . . . at most, changes the status of the trespasser to that of bare licensee, to whom the owner owes no greater duty than to a trespasser." *Carroll v. Spencer*, 204 Md. 387, 393 (1954). For an entrant to acquire a status greater than that of a bare licensee, there "must be more than passive acceptance [by the property owner]; there must be some form of inducement or encouragement." *Cheyne*, 99 Md. App. at 159; *see also Deboy*, 167 Md. App. at 556 ("[A]n invitation is conduct which justifies others in believing that the possessor *desires* them to enter the land; permission is conduct justifying others in believing that the possessor is *willing* that they shall enter if they desire to do so." (quoting Restatement (Second) of Torts § 332 cmt. b (Am. L. Inst. 1965) (alteration and emphasis added in *Deboy*))).

## II. MS. FLEMING WAS A BARE LICENSEE.

We hold that Ms. Fleming was not an invitee or a licensee by invitation and, therefore, was a bare licensee. We will therefore affirm the circuit court.

First, Ms. Fleming was not an invitee under either the mutual benefit or implied invitation standards. The summary judgment record contains no evidence that Ms. Fleming was on the property for Ms. Scott's benefit. In arguing to the contrary, Ms. Fleming suggests that evidence that she was on the property to return the knife, that Ms. Scott "wanted the knife back," and that Ms. Scott "expected and understood that [Ms. Fleming] would return to the Property in order to [return the knife]," supports her status as an invitee.

But, as Ms. Fleming acknowledges in her brief, returning the knife was simply the final step of the transaction of borrowing it—"the last leg of the knife borrowing transaction"—which was exclusively for Ms. Fleming's benefit. That Ms. Scott expected that the knife would be returned reflects the nature of the transaction, not that Ms. Fleming was acting for Ms. Scott's benefit.

The record also contains no evidence that Ms. Scott induced Ms. Fleming to enter her property. To the contrary, Ms. Fleming entered the property because she needed a favor. *See Deboy*, 167 Md. App. at 556 (noting that an invitation is conduct that indicates the landowner desires the entrant to come onto the landowner's property). In arguing to the contrary, Ms. Fleming focuses on Ms. Scott's custom and "habitual acquiescence" to Ms. Fleming and other neighbors entering onto her front porch, as well as the "design of the premises," which she contends "guided any person or member of the public . . . to use the front porch staircase to approach the Property." But neither allowing neighbors to approach the property nor having a front porch are sufficient to accord invitee status to neighbors who approach the property for their own purposes. If invitee status could be conveyed on any friendly visitor just by having an accessible set of front stairs and an expectation that visitors may use them, as Ms. Fleming appears to suggest, the distinction between an invitee and a licensee would disappear. Ms. Fleming has not cited any legal authority, nor have we found any, that supports her contention that she could be viewed as an implied invitee based on these facts.

Second, Ms. Fleming was not a licensee by invitation. That Ms. Fleming may have been a social guest of Ms. Scott in the past is irrelevant; the question is whether she was a

social guest on this occasion. *See Kight*, 25 Md. App. at 229. In *Kight*, this Court held that an entrant who was injured after she entered a property to use the owner's telephone "was, at best, a licensee, but only a bare licensee," notwithstanding that she previously "had gone to the home of the [property owners] many times in the past as a result of reciprocal invitations that were extended . . . on numerous occasions[.]" *Id.* at 228-30 (internal quotation marks omitted); *see also Macias*, 243 Md. App. at 324 (observing that an entrant's legal status is not static but can change through the passage of time, change of location, or exceeding the scope of an invitation). Similarly, Ms. Fleming was indisputably not a social guest on the occasion of her visit to Ms. Scott's property on October 26, 2017.

Notably, the case Ms. Fleming identified as most similar to hers concerning status as a licensee by invitation is *Paquin*, 246 Md. 569. In that case, however, the property owner had "extended an invitation to [the entrant] to stay at [the owner's] home," the entrant had slept in the home the prior night, and the entrant occupied a bedroom "in which [the entrant] had stayed on previous visits," all of which implied an expectation that the entrant would have full use of the home. *Id* at 571. The differences between *Paquin* and this case, in which Ms. Fleming had not been invited to the home or asked to stay, highlight the lack of legal authority to support Ms. Fleming's claim.

Because Ms. Fleming was a bare licensee, the only duty Ms. Scott owed her was to not willfully or wantonly injure or entrap her. Viewing the facts in the light most favorable to Ms. Fleming, the record does not contain any evidence that Ms. Scott violated such a duty. *See Wells*, 120 Md. App. at 720 ("[W]hen there is no evidence of willful or wanton

misconduct . . . summary judgment is appropriate."). Accordingly, the circuit court did not err in awarding summary judgment in favor of Ms. Scott, and we will affirm.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**