Circuit Court for Prince George's County
Case No: CAL19-17445

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 508

September Term, 2023

MICHAEL LEONARD

v.

ESTATE OF RONALD SCHMIDT

Ripken,
Albright,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: May 7, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises from an incident wherein Michael Leonard ("Leonard"), appellant, fell and sustained an injury as a result of walking up the front steps of Ronald Schmidt's ("Schmidt") home. Leonard filed a complaint asserting a claim for negligence against Schmidt. During the pendency of the case, sadly, Schmidt passed away. Thereafter, an amended complaint was filed substituting the Estate of Ronald Schmidt ("the Estate"), appellee, as the defendant. In April of 2023, the Circuit Court for Prince George's County held a two-day jury trial. At the close of Leonard's case, the court granted the Estate's motion for judgment. Leonard noted this timely appeal and presents two questions for our review, which we have consolidated and rephrased to: Did the circuit court err in granting the Estate's motion for judgment?[1] For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

For approximately 22 years preceding the incident which gave rise to the instant case, Leonard and Schmidt were next-door neighbors. At the time of trial in 2023, Leonard was 67 years old. He testified that Schmidt, who passed away in January 2022, was approximately 30 years older than him, "had something wrong with one of his legs[,]" and "kind of limped a little bit and wore a back brace all the time." According to Leonard, the

[1] The questions as presented by Leonard are:

> 1. Did the trial court err when, in the context of granting Appellee's motion for judgment, finding Appellant was a bare licensee?
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> 2. Did the trial court err when, in the context of granting Appellee's motion for judgment, finding Appellee otherwise did not have constructive notice of the dangerous condition on his premise?

two men had a good relationship and visited each other's homes. Leonard testified that he went to Schmidt's property a few times per month because Schmidt would "be out in the yard a lot digging in the grass and stuff and I would go over there an[d] talk to him[.]" Leonard testified he had been in Schmidt's garage and basement and would talk to Schmidt while standing in Schmidt's yard. Leonard had also borrowed Schmidt's ladder and lawn mower and shoveled snow for Schmidt "when a heavy snow came down." Leonard testified that Schmidt had permission to come onto his property, and that he had permission to go onto Schmidt's property.

On Thanksgiving Day of 2018, Leonard took a plate of food to Schmidt. Leonard testified he walked across Schmidt's back yard to his back door. When Schmidt answered the back door, Leonard handed him the plate of food, told him to enjoy it, and said that he would "probably pick the plate up . . . later on[.]" Four days later, on November 26, 2018, while Leonard was out getting gas for his car, his wife requested that he retrieve the plate from Schmidt. Leonard decided to go get the plate before his wife returned home because he "didn't want to hear [her] nagging [him]."

This time, Leonard went to Schmidt's front door. Leonard testified that there was "a big oak tree limb" over the front door and that the leaves "come down quite frequently in November, you know, they are shedding very rapidly." As he approached the two or three steps leading to the front door, Leonard observed some leaves that "appeared to be dry[.]" The leaves were on the ground, stairs, porch, and "all over the place." It was not raining, and Leonard testified that he thought the leaves "looked safe enough to walk on[,]"

that he did not "think anything about" them, or consider the leaves to be dangerous. But as Leonard stepped up the stairs to the front door, he slipped, and fell forward hitting his head on the concrete below the screen door.

Leonard testified that after hitting his head, he lay on the ground for seven to eight minutes "somewhat unconscious" and "very dazed." Schmidt came to the door and Leonard entered his house. Schmidt asked Leonard if he wanted to go to the hospital, but he declined. At some point, Leonard looked back at what he had stepped on and saw that there were "slick looking" wet leaves "under the dry leaves." He testified that the leaves were "slick in general . . . like they hadn't been moved in a little while." Leonard returned to his own house and his son called an ambulance. He was transported to Prince George's County Hospital where he received treatment to close his head wound and was released about two hours later.

At the close of Leonard's case, the Estate moved for judgment. After hearing argument on the motion, the court granted judgment in favor of the Estate, stating, in part:

> The evidence is clear that Mr. Leonard was at Mr. Schmidt's property, not at the invitation of Mr. Schmidt, but at the behest of his wife who asked him to retrieve a plate. So the [c]ourt finds that it's undisputed that Mr. Leonard, on this date, was a bare licensee. As a bare licensee, Mr. Leonard, he took the property as he found it. And so Mr. Schmidt, at that point, owed him no duty, except that he could not willfully or wantfully injure Mr. Leonard or entrap him once he was aware of his presence on his property.
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> So the [c]ourt will grant judgment to the Defendant on the evidence. And the [c]ourt, in reaching its decision, is looking at the facts most favorable to Mr. Leonard as the non-moving party. But under the facts of this case, at this stage Mr. Leonard is a bare licensee, there's no other facts that the [c]ourt could look at that would demonstrate that he was anything other than a bare licensee having entered the premises, not at the invitation of Mr. Schmidt,

> but for his own purposes to retrieve a plate. And the [c]ourt will note also that on this evidence, again, even if he was an invitee, there would still need to be proof of some actual constructive notice of the dangerous condition. And the [c]ourt finds that there is, other than testimony regarding the leaves being dry on top and wet on the bottom, that, at this point, doesn't find that that is sufficient to demonstrate that they had been there for a long enough time that Mr. Schmidt [] should have had at least some constructive notice of some condition that was dangerous.
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> There's no testimony about how long they'd been there or what the weather was like. In terms of whether it had rained some days before or some days after, or some days before. The [sic] could explain the wetness. So therefore the [c]ourt, again, is going to grant the Defendant's motion.

DISCUSSION

A. Parties' Contentions

In support of his contention that the circuit court erred in granting judgment in favor of the Estate, Leonard argues that the court committed error in finding that he was a bare licensee and in finding that Schmidt did not have constructive notice of the dangerous condition on his premise. With respect to both arguments, Leonard asserts that the trial court failed to view the facts presented, and inferences drawn from those facts, in a light most favorable to him. The Estate contends that the court correctly found that the evidence presented at trial supported a conclusion that Leonard was a bare licensee, and additionally that Schmidt did not have constructive notice of the dangerous condition on his property.

B. Standard of Review

Leonard contends that the circuit court erred in granting judgment in favor of the Estate. Maryland Rule 2-519(a) provides, in pertinent part, that "[a] party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an

opposing party, and in a jury trial at the close of all the evidence." We review a trial court's decision to grant a motion for judgment in a civil case de novo. *District of Columbia v. Singleton*, 425 Md. 398, 406 (2012); *Thomas v. Panco Mgmt. of Md., LLC*, 423 Md. 387, 393–94 (2011). In assessing the grant of a motion for judgment, a reviewing court "conduct[s] the same analysis that a trial court should make when considering the motion for judgment." *Singleton*, 425 Md. at 406–07. In so doing, we construe all evidence and all and reasonable inferences drawn from the evidence in "'the light most favorable to the non-moving party.'" *Id.* at 406–7 (quoting *Thomas*, 423 Md. at 393). A motion for judgment should be denied where there is any evidence in the record "'no matter how slight, that was legally sufficient to generate a jury question[.]'" *Ayala v. Lee*, 215 Md. App. 457, 467 (2013) (quoting *Address v. Millstone*, 208 Md. App. 62, 80 (2012)). However, where the evidence and related inferences permit "but one conclusion, the question is one of law and the motion must be granted." *Id.* (internal quotation marks and citation omitted).

C. Analysis

1. Premises Liability

Notably this Court has stated premises liability is "based on common law principles of negligence," and as such a plaintiff is required to establish, as in any negligence action "(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." *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 313 (2019) (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173

Md. App. 305, 314 (2007)). It is the plaintiff's burden to prove each of these elements. *Pratt v. Maryland Farms Condo. Phase 1, Inc.*, 42 Md. App. 632, 640 (1979) ("[I]f the plaintiff does not . . . introduce evidence on each element which is sufficient to warrant a finding in his favor, he will lose his case at the hands of the court[.]").

In Maryland, the liability of an owner of real property is dependent upon the standard of care owed to an individual. The standard of care, in turn, depends upon the individual's legal status while on the real property. *Rowley v. Mayor & City Council of Baltimore*, 305 Md. 456, 464–65 (1986); *Sherman v. Suburban Trust Co.*, 282 Md. 238, 241–42 (1978); *Bramble v. Thompson*, 264 Md. 518, 521 (1972). Historically, Maryland has recognized four classifications: "invitee, licensee by invitation, bare licensee, and trespasser." *Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 688 (1998); *see also Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 387–88 (1997) ("It is well settled that the duty that an owner or occupier of land owes to persons entering onto the land varies according to the visitor's status as an invitee (i.e., a business invitee), a licensee by invitation (i.e., a social guest), a bare licensee, or a trespasser.") (quotation marks and citations omitted). In *Macias*, we explained:

> 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, internal citations, and quotation marks removed).

"An invitee is, in general, a person invited or permitted to enter or remain on one's property for purposes connected with or related to the possessor's business." *Howard County Bd. of Educ. v. Cheyne*, 99 Md. App. 150, 155 (1994). The landowner must, using reasonable and ordinary care, 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 his [or her] own safety, will not discover." *Bramble*, 264 Md. at 521. *See also DeBoy v. City of Crisfield*, 167 Md. App. 548, 555 (2006). A licensee by invitation is a person who enters a property by the consent of the owner for the purpose of a social visit. *Bramble*, 264 Md. at 521. 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). A licensee by invitation "takes the premises as [the] host uses them." *Bramble*, 264 Md. at 521. The host must take the same care of the guest as the host takes of himself [or herself] 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.

By contrast, a bare licensee is an individual who enters a property with the owner's

consent, not as a social guest, but for his or her own purpose and convenience. *Mech v. Hearst Corp.*, 64 Md. App. 422, 426 (1985). A trespasser enters a property intentionally and without privilege or the consent of an owner. *See Flippo*, 348 Md. at 689. 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; *see also Wagner v. Doehring*, 315 Md. 97, 102 (1989); *DeBoy*, 167 Md. App. 548, 555 (2006).

Acquiescence is not invitation. *Carroll v. Spencer*, 204 Md. 387, 393 (1954). Acquiescence to an individual's entry on property does not confer status as an invitee or licensee by invitation on an entrant. *Id.* At most, acquiescence "changes the status of the trespasser to that of bare licensee, to whom the owner owes no greater duty than to a trespasser." *Id.* 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*))).

2. Leonard's Status as a Bare Licensee

Our review of the record convinces us that Leonard was a bare licensee. That

Leonard may have been a social guest of Schmidt in the past is of no relevance to this analysis; the question is whether he was a social guest on the day of the incident. In *Knight v. Bowman*, 25 Md. App. 225 (1975), we 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 [property owners'] house many times in the past as a result of reciprocal invitations that were extended . . . on numerous occasions[.]" *Id.* at 228–30. Similarly, in *Macias*, we observed that an entrant's legal status "is not static" but may change due to the passage of time, a change in location, or by exceeding the scope of an invitation. *See Macias*, 243 Md. App. at 324.

The evidence presented below, viewed in the light most favorable to Leonard, showed that he went to Schmidt's property on numerous occasions to speak with Schmidt when Schmidt was outside in his yard, not because Leonard was invited, but because Schmidt acquiesced to his presence. There was nothing in Leonard's testimony regarding his past interactions with Schmidt to show that Schmidt induced or encouraged him to come onto his property on the day of the accident. On Thanksgiving Day, Schmidt might have passively acquiesced to Leonard's statement that he would return at some unspecified time to retrieve the plate, but there was no evidence to show, or from which it could be inferred, that Schmidt induced or encouraged him to do so. To the contrary, Leonard explicitly testified that on the day of the accident, he went to Schmidt's house for his own purpose, which was to retrieve the plate at the behest of his wife. As there was no evidence to show that Schmidt induced or encouraged Leonard to enter onto his property on the day

of the accident, the only inference that could be drawn was that Leonard was a bare licensee. Because Leonard was a bare licensee, the duty Schmidt owed to him was to not willfully or wantonly injure or entrap him. Viewing the evidence in the light most favorable to Leonard, the record does not suggest that Schmidt violated such a duty. For those reasons, the circuit court did not err in granting judgment in favor of the Estate.

3. Constructive Knowledge of the Dangerous Condition

Even if Leonard could have shown that he was a licensee by invitation on the day of the accident, he would fare no better. There was no evidence presented to support the contention that Schmidt had actual or constructive knowledge that the leaves on his front porch and steps presented a dangerous condition. Leonard asserts that a jury could have inferred from the time of year, the presence of the oak tree limb over the steps, his testimony that wet leaves covered by dry leaves appeared to have been there for "a little while," and that as Schmidt spent time "digging in the grass and stuff," that Schmidt had constructive notice of the dangerous condition. We disagree.

Regarding knowledge of a dangerous condition, Maryland's appellate courts have made clear that to generate a triable issue, under even the most demanding standard of care, some evidence that the premises owner knew or should have known of the dangerous condition is required. *Deering Woods Condo. Assoc. v. Spoon*, 377 Md. 250, 264–68 (2003); *Macias*, 243 Md. App. at 317; *Joseph*, 173 Md. App. at 315. "[T]o show constructive knowledge, [an] invitee must demonstrate that [the] defective condition existed long enough to permit one under a duty to inspect to discover the defect and remedy

it prior to the injury." *Joseph*, 173 Md. App. at 316–17 (quoting *Deering Woods*, 377 Md. at 267–68) (emphasis omitted).

As our caselaw makes clear, it is the property owner's superior knowledge of a perilous instrumentality that creates a duty to protect an entrant from related danger; absent such actual or constructive knowledge, there can be no liability. *See Pratt v. Maryland Farms Condo. Phase 1, Inc.*, 42 Md. App. 632, 639 (1979); s*ee also Deering Woods*, 377 Md. at 264–68 (no prima facie showing of negligence without evidence that the defendant should have known of the risk of black ice close in time to when the plaintiff slipped on it); *Richardson v. Nwadiuko*, 184 Md. App. 481, 496 (2009) (no evidence that a doctor knew of a slippery condition in his waiting room where no one had previously slipped, and the doctor had not observed the area for two hours before the incident); *Joseph*, 173 Md. App. at 319 (no evidence of actual or constructive knowledge of oily substance in apartment building stairwell).

In this case, Leonard did not present evidence that Schmidt had been outside his home or had otherwise observed the condition of his porch and front steps prior to the incident. Although Leonard had seen Schmidt "in the yard a lot digging in the grass and stuff[,]" there was no evidence that Schmidt had been outside of his house in the hours, days, or weeks leading up to the accident. The only evidence concerning Schmidt's whereabouts immediately before the incident indicated that Schmidt was inside his home at the time Leonard fell. With respect to the tree limb that hung over the porch, Leonard acknowledged that "the leaves come down quite frequently in November" and "they are

shedding very rapidly." Further, Leonard himself "didn't think [the leaves] would be dangerous at all[.]" There was not sufficient evidence in the record to allow for an inference, even in the light most favorable to Leonard, that Schmidt knew or should have known that the leaves on his front steps and porch had accumulated to a degree to present the dangerous condition alleged by Leonard.[2]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[2] We reject Leonard's argument that the court "required" him to present testimony from Schmidt to establish Schmidt's constructive knowledge. Our review of the record reveals that Leonard did not introduce any evidence which would indicate that Schmidt, in the period leading up to the accident, had knowledge of the accumulation of leaves. We do not take the court's statement, which indicated that it was possible to gain an understanding of an individual's actual or constructive knowledge by "asking them[,]" to mean that the court required live testimony from a deceased party. Rather, the court was referencing that, during argument concerning the motion for judgement, Leonard's attorney alluded to Schmidt's deposition prior to his death which was preserved on video. As the court correctly noted, notwithstanding the availability of the video testimony to Leonard's counsel, the court could only evaluate the motion for judgement based on the record evidence adduced during Leonard's case, and not, as Leonard's attorney seemed to suggest, on statements made in deposition that were not part of the record.