Circuit Court for Queen Anne's County
Case No.: C-17-CV-22-000177

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 980

September Term, 2023

ARLENE GUAGLIANO

v.

QUEENSTOWN OUTLETS, L.P., ET AL.

Arthur,
Tang,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, 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).

Arlene Guagliano, the appellant, sued Queenstown Outlets, L.P., Simon Property Group, Inc., and Second Horizon Group, L.P. (collectively, "Queenstown Outlets"), the appellees, seeking damages for injuries she suffered after falling on a sidewalk at an outlet mall under the appellees' control. When she fell, the appellant was walking to the restroom on the property. The Circuit Court for Queen Anne's County determined that at the time of the fall, the appellant was a bare licensee to whom Queenstown Outlets did not owe any heightened duty of care. Based on that conclusion, the court granted summary judgment in favor of Queenstown Outlets. On appeal, the appellant contends that the court erred in determining that she was a bare licensee. Because we agree with the circuit court, we will affirm.

BACKGROUND

On November 6, 2019, the appellant left work and began her approximate two-hour commute back home to St. Michaels, Maryland. About halfway home, the appellant stopped at the outlet mall to use the restroom. It was undisputed that she had never shopped there before and was not there to shop or dine. Instead, she had used the outlet mall as "a bathroom stop."

As the appellant walked toward the restroom, she tripped on an uneven paver block in the sidewalk and injured her left hand. The restroom was next to a restaurant with two small signs showing its location.

The appellant's complaint against Queenstown Outlets alleged negligence; negligent hiring, training, and supervision; and agency (vicarious liability). Queenstown

Outlets moved for summary judgment. They argued that based on the undisputed material facts, the appellant was a bare licensee, and thus, they did not breach any duty owed to her.

Following a hearing, the court concluded that the appellant had undisputedly "stopped at the Outlets for the sole purpose of using the restroom[,]" making her a bare licensee. As a result, Queenstown Outlets' only duty was to refrain from willful or wanton misconduct or entrapment, neither of which was supported by any evidence. Accordingly, the court granted summary judgment for Queenstown Outlets on all counts. This timely appeal followed.

STANDARD OF REVIEW

Under Maryland Rule 2-501, the circuit court may enter summary judgment for the moving party if it determines there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *See Deboy v. City of Crisfield*, 167 Md. App. 548, 554 (2006). "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 disputed, 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. *See id*. at 312–15. The facts and inferences that can reasonably be drawn from those facts must be viewed in the light most favorable to the non-moving party. *Wells v. Polland*, 120 Md. App. 699, 707–08 (1998). Moreover, in analyzing the court's decision, we are generally confined to the bases relied on by the court and will not

affirm the grant of summary judgment for a reason not relied on by the circuit court. *Deboy*, 167 Md. App. at 554 (citations omitted).

The appellant's sole contention on appeal is that the circuit court erred as a matter of law when it held that she was not an invitee but a bare licensee. Thus, we only need to determine whether the court was legally correct.

RELEVANT LAW

"In negligence actions, the duty of care an owner or occupier of land owes a visitor varies, depending on whether the entrant is an invitee, licensee, or trespasser." *Deboy*, 167 Md. App. at 555. "The highest duty is that owed to an invitee; it is 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." *Id*. (cleaned up). "By contrast, the landowner or occupier owes no duty to licensees or trespassers, except to abstain from willful or wanton misconduct or entrapment." *Id*.

Invitee Status

"An invitee is a person invited or permitted to enter or remain on another's property for purposes connected with or related to the owner's business[.]" *Rowley v. Mayor of Balt.*, 305 Md. 456, 465 (1986). "Invitee status can be established under one of two doctrines: (1) mutual benefit or (2) implied invitation." *Deboy*, 167 Md. App. at 555. "Under the mutual benefit theory, the invitee generally enters a business establishment for the purpose of purchasing goods or services." *Id.* "This theory places great weight upon the entrant's

subjective intent, and inquires into whether the entrant intended to benefit the landowner in some manner."[1] *Id.*

"By contrast, the implied invitation theory is objective and does not rely on any mutual benefit." *Id.* "Rather, the circumstances control, such as custom, habitual acquiescence of the owner, the apparent holding out of the premises for a particular use by the public, or the general arrangement or design of the premises." *Id.* "The gist of the implied invitation theory is the distinction between mere passive acquiescence by an owner or occupier in certain use of his land by others and direct or implied inducement." *Id*. at 555–56.

> To be considered an invitee under the implied invitation theory, it is necessary that
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> > the person injured did not act merely on motives of his own . . . but that he entered the premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he used them, and that such use was not only acquiesced in, but was in accordance with the intention or design for which the way or place was adapted and prepared or allowed to be used.

Id. at 556 (citation omitted).

Crown Cork & Seal Co. v. Kane, 213 Md. 152 (1957) is the seminal Maryland case on implied invitation. There, the plaintiff truck driver, who, as part of his employment, had gone many times to the defendant's warehouse to pick up or deliver loads, walked to the cellar of the warehouse to smoke. *Id*. at 155–56. As smoking was not allowed in the docking area, the plaintiff, along with many other truckers, would regularly access the smoking room during their wait. *Id.* On his way back from the cellar, he was hit and injured

[1] The appellant concedes that she was not an invitee under the mutual benefit theory.

by a forklift truck. *Id*. at 156. He argued the defendant company was negligent because he was an invitee under the implied invitation theory, and the defendant had failed to use reasonable care. *Id*. at 156–57.

The Supreme Court of Maryland concluded there was sufficient evidence to support a theory of implied invitation. *Id*. at 162. There was evidence that the room was designated specifically for smoking, its location was made known to the plaintiff, it was habitually used by visiting truckers, and the foreman and other employees knew of this. *Id.*

Licensee Status

Unlike an invitee, "[a] bare licensee is one who enters the property of another with the possessor's knowledge and consent, but for the licensee's own purpose or interest." *Rivas v. Oxon Hill Joint Venture*, 130 Md. App. 101, 110 (2000). As we stated, "[n]o duty is owed to a bare licensee except that he or she may not be wantonly or willfully injured or entrapped[.]" *Richardson v. Nwadiuko*, 184 Md. App. 481, 490–91 (2009) (citation omitted).

Deboy v. City of Crisfield, 167 Md. App. 548 (2006) is instructive. There, the plaintiff was walking her dogs on the property of a convenience store. *Id*. at 553. While walking, she stepped on a water meter housing cover, which caused the cover to come off and her leg to fall into the housing. *Id*. at 553–54. As a result, the plaintiff sustained injuries to her leg and knee. *Id.* at 553. Although the plaintiff acknowledged that she was not an invitee under the mutual benefit theory, she argued that she was an implied invitee. *Id*. at 557. This is because the store held its property open to the public in the hope that members of the public would buy something. *Id*. at 558. She also claimed that the store had inviting

ads that induced passersby to stop and make a purchase. *Id*. She added that she may have bought something from the store while walking her dogs on store property, as she had done before. *Id*.

We held that the plaintiff was a bare licensee. *Id*. In her deposition, the plaintiff had specifically and unequivocally stated that she had no intention of stopping at the store to buy anything; she was on the property only to walk her dogs. *Id*. Nor was there any evidence that the store intended or designed its property to be used by visitors to walk their dogs. *Id*. Thus, the plaintiff was on the property solely for her own purposes. *Id.* Although the defendants may have acquiesced to her use of the property, she could not be considered an invitee under the implied invitation theory. *Id*.

DISCUSSION

The appellant contends that the circuit court erred in granting summary judgment because she was an invitee, and thus, Queenstown Outlets owed her a heightened duty of care. She presents two arguments, which contain overlapping points. First, the appellant argues that she was an invitee because Queenstown Outlets "permitted" visitors to enter for purposes related to their business, such as using the restroom on the premises. She relies on the Maryland Pattern Jury Instruction 24:2(a), which defines an "invitee" as "a person who is invited or *permitted* to be on another's property for *purposes related* to the owner's or occupier's business."[2] (Emphasis added). Queenstown Outlets neither barred visitors

[2] Queenstown Outlets urges us to disregard the instruction, as the point was not raised below. Regardless, they argue that there is no need to consider the instruction (a secondary source and non-binding authority) when case law conclusively establishes that (continued)

from entering the outlet mall nor prevented them from using the restroom on the property. She adds that Queenstown Outlets designed the property to invite or permit people to enjoy amenities like the unlocked restroom. According to her, the design of the outlet mall and the absence of barriers to using its restroom amounted to "permission" from Queenstown Outlets and thus made her an invitee at the time of the fall.

Second, the appellant argues that she was an implied invitee. She reiterates that Queenstown Outlets designed its premises to include public restrooms for people to use. There were no security guards, gate booths, attendants, or other ways to bar entry to the premises. Nor was there any evidence of visitors being removed for not buying anything, window shopping, or using the restroom. The restroom was not locked, and there was no access code. Instead, it was labeled with signage directly off a prominent walkway on the property. Without such barriers to entry, Queenstown Outlets led her and others to believe that the outlet mall was intended to be used in the way she had used it. In summary, the appellant's "use [of the restroom] was both acquiesced to, and in accordance with the intention or design for use of the property."

The appellant's arguments do not persuade us. Regarding her first argument, the appellant's reliance on MPJI-Cv 24:2(a) is flawed. The instruction correctly recites controlling law as it is derived from *Rowley*, *supra. See* MPJI-Cv 24:2 cmt. A.1. But her interpretation of it implies that it encompasses the entire law on establishing invitee status

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the appellant was a bare licensee. The core of the appellant's first argument is that unfettered entry into the outlet mall and access to its restroom amounted to "permission" from Queenstown Outlets, making her an invitee at the time of the fall. This contention is a mere variation of points raised below; thus, the appellant has preserved the argument.

without considering the two doctrines of mutual benefit and implied invitation, summarized *supra*. Furthermore, if the language is interpreted as broadly as suggested by the appellant, it would eliminate the common law distinctions between invitees and licensees for purposes of premises liability.

"Mere permission, as distinguished from invitation, is sufficient to make the visitor a licensee . . . but it does not make [her] an invitee, even where [her] purpose in entering concerns the business of the possessor." *Deboy*, 167 Md. App. at 556 (citing Restatement (Second) of Torts § 332 cmt. b (1965)); *see Howard Cnty. Bd. of Educ. v. Cheyne*, 99 Md. App. 150, 158 (1994) ("mere acquiescence or mere permission will not create an invitee status"). The possessor's actions "must be more than passive acceptance; there must be some form of inducement or encouragement." *Cheyne*, 99 Md. App. at 159. In *Kane*, the property owner intended and encouraged all smokers to use a particular room for smoking, and an employee had invited the plaintiff to enter that room. 213 Md. at 162. "[I]t was this very permission along with other conduct that resulted in an implied invitation." *Cheyne*, 99 Md. App. at 159 (citing *Kane*, 213 Md. at 162). By contrast, there was no evidence that Queenstown Outlets intended, let alone induced, visitors to use the outlet mall for restroom purposes.

Regarding her second argument, there was no evidence that the absence of locks on the restroom or the existence of signage nearby suggested that Queenstown Outlets intended or designed the outlet mall to be used by visitors for restroom purposes. Nor does their failure to bar visitors from using the restrooms amount to an invitation to visitors to use the restrooms. *See, e.g.*, *Glaze v. Benson*, 205 Md. 26, 34–35 (1954) (although

invitation may be implied from the environment and plaintiff was invitee at public beach, invitation did not include diving into water from dining pavilion rail; rejecting contention that absence of warning sign at rail and existence of deep water sign 40 feet to its right constituted an implied invitation to patron to dive with justifiable expectation of finding deep water beneath pavilion); *see also Brosnan v. Koufman*, 2 N.E.2d 441, 443 (Mass. 1936) ("an invitation was not implied simply because the building was apparently open and passersby were not forbidden by sign or otherwise to enter"); *Arp v. Waterway East Ass'n*, *Inc.*, 217 So.3d 117, 120 (Fla. Dist. Ct. App. 2017) (the absence of "No Trespassing" signs "does not mean that a landowner has impliedly invited the public on the land.").

As in *Deboy*, the unequivocal deposition testimony by the appellant was that she stopped at the outlet mall to use the restroom and did not patronize the shops or restaurants there. The circuit court was legally correct in concluding that the appellant was a bare licensee. Accordingly, Queenstown Outlets owed the appellant no duty beyond abstaining from willful and wanton misconduct. The appellant does not dispute the court's conclusion that Queenstown Outlets' actions did not amount to wanton or willful misconduct. Nor does she challenge the court's decision on the remaining counts. Thus, because we agree with the circuit court that the appellant was a bare licensee, we affirm the judgment.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.