Opinion, Case No.23348 Gaynelle Self v. Mayme Queen

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1997 Term

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No. 23348

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GAYNELLE SELF,

Plaintiff Below, Appellant

v.

MAYME QUEEN,

Defendant Below, Appellee

Appeal from the Circuit Court of Wayne County

Honorable Robert Chafin, Judge

Civil Action No. 94-C-120-A

AFFIRMED

Submitted: January 21, 1997

Filed: February 24, 1997

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Attorneys for the Appellee

The Opinion of the Court was delivered PER CURIAM.

CHIEF JUSTICE WORKMAN and JUSTICE STARCHER concur, and reserve the right to file concurring Opinions.

SYLLABUS BY THE COURT

1. "Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it

has the burden to prove." Syllabus point 4 of *Painter v. Peavy,* 192 W.Va. 189, 451 S.E.2d 755 (1994).

2. "Mere permissive use of the premises, by express or implied authority ordinarily creates only a license, and as to a licensee, the law does not impose upon the owner of the property an obligation to provide against dangers which arise out of the existing condition of the premises inasmuch as the licensee goes upon the premises subject to all the dangers attending such conditions." Syllabus, *Hamilton v. Brown,* 157 W.Va. 910, 207 S.E.2d 923 (1974).

Per Curiam:

The appellant in this proceeding, Gaynelle Self, claims that the Circuit Court of Wayne County erred in awarding her mother, the appellee, Mayme Queen, summary judgment in this premises liability action. In awarding summary judgment, the circuit court held that the appellant, who was injured in a fall on her mother's property, occupied the status of a licensee at the time of the fall and that her mother was not guilty of willful or wanton misconduct in the maintenance of the premises on which the fall occurred. The court concluded that under our law a property owner is responsible to a licensee only for injuries arising out of willful or wanton misconduct, and the appellant, as a matter of law, was not entitled to recover. On appeal, the appellant claims that the circuit court erred in finding that she was a licensee, rather than an invitee to whom a higher duty of care is owed, and that as a consequence, the circuit court's granting of summary judgment was improper. The appellant also urges this Court to change the established law in this state relating to liability involving invitees and licensees.

After reviewing the issues presented, as well as the facts of this case, this Court cannot conclude that the trial court erred in holding that the appellant was a licensee, and the Court declines to alter the established law relating to licensees and invitees. As a consequence, the Court affirms the judgment of the Circuit Court of Wayne County.

The facts in this case do not appear to be substantially in dispute. At the time of the incident giving rise to the action, Mayme Queen, the mother of the appellant, was a resident of Wayne County, West Virginia, and the appellant, Gaynelle Self, was a resident of Michigan. Prior to the incident Gaynelle Self had traveled from Michigan to Wayne County to visit her mother and other relatives and friends in the Wayne County

area. The purpose of this visit was clearly social.

On the day of the incident the appellant who was at a sister's house next to the house of their mother, agreed to purchase some milk for her mother upon leaving the sister's house. When she did leave, and as she was entering a car, her mother called out to her to come and get money for the milk. The appellant exited the car and started toward her mother's house across her mother's yard. In so doing she stepped into a deep hole and fell and broke her ankle. There is evidence suggesting that the appellant's mother knew of the hole, but there is no evidence that the mother intentionally concealed the existence of the hole although it was apparently hidden by long grass which had grown up around it.

The appellant sued her mother for the injuries sustained in the fall, but prior to trial, the attorney for the appellant's mother moved for summary judgment. He claimed that the appellant was a mere licensee at the time of the fall, and that the duty which her mother owed her, was only a duty not to act willfully or wantonly to cause harm to her. This duty is substantially different from the much greater duty owed an invitee.

The circuit court, after hearing arguments, concluded that the appellant was in fact a licensee, rather than an invitee, of her mother. The court also concluded that since the evidence failed to show that the appellant's mother had acted willfully or wantonly to cause injury to the appellant, the evidence could not support a recovery for the appellant. As a consequence, the trial court entered summary judgment for the appellant's mother.

In the present case, the appellant essentially argues that she was an invitee rather than a licensee, and that the trial court erred in granting summary judgment.

In syllabus point 4 of *Painter v. Peavy,* 192 W.Va. 189, 451 S.E.2d 755 (1994), this Court indicated that:

Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.

Going beyond this, to approach the deeper legal questions in this case, the Court notes that whether a party injured on the premises of another is a licensee or invitee is significant under the law of West Virginia, because the law imposes different duties of care on possessors of premises with regard to licensees and invitees. As stated in *Cavender v. Fouty*, 195 W.Va. 94, 98, 464 S.E.2d 736, 740 (1995):

The duty owed to an invitee was outlined in Syl. pt. 2 of *Morgan v. Price,* where we said: "The owner or the occupant of premises owes to an invited person the duty to exercise ordinary care to keep and maintain the premises in a reasonably safe condition." Point 2 Syllabus, *Burdette v. Burdette,* 147 W.Va. 313 [127 S.E.2d 249]... However, in the case of a licensee, that is a person on another's property with expressed or implied permission, the property owner does not have to correct the dangers arising from existing conditions. In the Syllabus of *Hamilton v. Brown,...*[157 W.Va. 910, 207 S.E.2d 923 (1974)] we said: "Mere permissive use of the premises, by express or implied authority ordinarily creates only a license, and as to a licensee, the law does not impose upon the owner of the property an obligation to provide against dangers which arise out of the existing condition of the premises inasmuch as the licensee goes upon the premises subject to all the dangers attending such conditions." *See also Miller v. Monongahela Power Co.,* 184 W.Va. At 667-68, 403 S.E.2d at 410-11.

Recently in *Jack v. Fritts,* 193 W.Va. 494, 457 S.E.2d 431 (1995), this court recognized that a social guest was nothing more than a licensee. This is consistent with a widely recognized rule in the United States, for as stated in W. Page Keeton et al., Prosser and Keeton on the Law of Torts 60, at 414 (5th ed. 1984):

"[N]early all of the decisions are agreed that a social guest, however cordially he may have been invited and urged to come, is not in law an invitee--a distinction which has puzzled generations of law students, and even some lawyers and judges. The guest is legally nothing more than a licensee, to whom the possessor owes no duty of inspection nor affirmative care to make the premises safe for his visit. The fact that in the course of his visit he gratuitously performs incidental services for his host, such as picking fruit, washing the dishes, or feeding the dog, does not in most states improve his legal position." (Notes omitted).

In the present case, even though the appellant was ostensibly traversing her mother's yard to help her mother procure milk, the overall context in which this was done was that of a social guest, and it appears to this Court, as it apparently appeared to the circuit court, that what the appellant was actually doing was gratuitously performing an incidental service for her hostess, her mother. In effect, this Court believes that, given the law cited, the trial court properly concluded that the appellant was a licensee rather than an invitee.

Further, since the record fails to show that the appellant's mother acted willfully or wantonly, and since no fair reading of the record suggests that such might be proven, the Court concludes that the appellant has failed to make a sufficient showing of the essential elements of her case to merit going forward with trial and that the trial court

properly entered summary judgment.

The Court notes that the appellant makes an extraordinary proposal and urges us to abandon well-settled and long-established common law relating to the circumstances of this case, and to revisit the common law rule which now defines the duty an owner/possessor of premises owes to persons upon those premises. Presently, the scope of the duty owed a visitor by an owner/possessor of property is determined by the status of that visitor while on the premises.

Since we left the Mother State we have always recognized in our jurisprudence the distinction between invitees, licensees, and trespassers. This distinction is very specific and provides us with a precise, definite gauge by which to measure the extent of the duty of care owed the visitor and clearly defines the precaution to be taken. The standard is precise and not vague. The appellant would have us depart from the precise, detailed rule, abolish the invitee/licensee distinction, and adopt a single reasonable care standard. In other words, change the rule from specific to vague. This is not the policy of the law. The law always favors the more exact and specific rule as opposed to the vague and indefinite.

Oliver Wendell Holmes, Jr., writing in his 1881 book The Common Law, in the section "Trespass and Negligence," at page 112 states:

From the time of Alfred to the present day, statutes and decisions have busied themselves with defining the precautions to be taken in certain familiar cases; that is, with substituting for the vague test of the care exercised by a prudent man, a precise one of specific acts or omissions. The fundamental thought is still the same, that the way prescribed is that in which prudent men are in the habit of acting, or else is one laid down for cases where prudent men might otherwise be in doubt.

And further, at page 111, with very nice Nineteenth Century language, Holmes states:

Finally, any legal standard must, in theory, be capable of being known. When a man has to pay damages, he is supposed to have broken the law, and he is further supposed to have known what the law was.

If, now, the ordinary liabilities in tort arise from failure to comply with fixed and uniform standards of external conduct, which every man is presumed and required to know, it is obvious that it ought to be possible, sooner or later, to formulate these

standards at least to some extent, and that to do so must at last be the business of the court. It is equally clear that the featureless generality, that the defendant was bound to use such care as a prudent man would do under the circumstances, ought to be continually giving place to the specific one, that he was bound to use this or that precaution under these or those circumstances. The standard which the defendant was bound to come up to was a standard of specific acts or omissions, with reference to the specific circumstances in which he found himself. If in the whole department of unintentional wrongs the courts arrived at no further utterance than the question of negligence, and left every case, without rudder or compass, to the jury, they would simply confess their inability to state a very large part of the law which they required the defendant to know, and would assert, by implication, that nothing could be learned by experience. But neither courts nor legislatures have ever stopped at that point.

We believe that to revise the rule, to depart from our specific and definite standard, and to adopt a vague single reasonable care standard, which Holmes calls a "featureless generality" would in effect, leave "every case, without rudder or compass, to the jury." Oliver Wendell Holmes, Jr., The Common Law (1881). The rule has served us well from the time of Alfred to the present. We see no compelling reason for change now and will keep the rudder and the compass.

For the reasons stated, the judgment of the Circuit Court of Wayne County is affirmed.

Affirmed.