

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-130

NOVEMBER TERM, 2003

Lorraine Guinard	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Richard and Julia Bowen	}	DOCKET NO. 66-2-01 Wncv
	}	
	}	Trial Judge: Mary Miles Teachout
	}	
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff sued her daughter and son-in-law for injuries she received in a fall on their property. She appeals the Washington Superior Court= s dismissal of her complaint by way of summary judgment, claiming that the question of defendants= alleged negligence should have gone to the jury. We agree with the superior court that summary judgment in this case was proper, and therefore we affirm.

We employ the same standard as the trial court when reviewing an order of summary judgment on appeal. Mellin v. Flood Brook Union Sch. Dist., 173 Vt. 202, 211(2001). Summary judgment must be entered where the record reveals no genuine issue of material fact, and any party is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3); Mellin, 173 Vt. at 211. The material facts in this case are undisputed.

On August 18, 1999, plaintiff, who is sixty-eight years old, attended an annual family reunion which had been held at defendants= home in each of the previous five or six years. Defendants set up a tarp to provide shade during the event which they attached to their barn and to three wooden posts. Each post was held up by a rope and wooden stake system. The stakes, which were not painted, were approximately eighteen inches in total length with roughly eight to ten inches extending above the ground. After plaintiff had been on the property for about a half hour, a storm threatened the gathering, so defendants decided to remove the tarp and move the party into the barn. After the tarp had been taken down, but before the stakes were removed from the ground, plaintiff began assisting defendant Richard Bowen with straightening and folding the tarp. As she was doing so, plaintiff walked backwards and tripped on one of the wooden stakes. Plaintiff= s right wrist fractured and her elbow dislocated.

Plaintiff brought the present action to recover damages resulting from her injuries. Alleging that plaintiff was a social guest at their home, defendants moved for summary judgment. Although plaintiff conceded that she was a social guest at the time of the accident, she opposed summary judgment claiming that defendants were liable to her because they failed to either make the wooden stakes more noticeable, remove them, or warn her of their existence before she began helping to fold the tarp. The court granted summary judgment to defendants because the facts did not establish negligence as a matter of law. We agree.

In Lomberg v. Renner, we explained that a host has no duty to a social guest to A reconstruct or improve the premises for the purpose of making his house more convenient, or more safe, for the guest accepting his hospitality. @ 121 Vt. 311, 315 (1959). A social guest may recover for injuries received on the property only if the host was affirmatively negligent or the injury was caused by a defect on the property that was so latent that it amounted to a A trap or pitfall. @

Id.; see also Menard v. Lavoie, 806 A.2d 1004, 1006 (2002) (mem.) (noting that holding landowner liable to social guest requires active or affirmative negligence by the landowner).

The undisputed facts of this case fail to establish a triable issue on whether defendants breached the minimal duty they owed to plaintiff. The stakes, which protruded from the ground by approximately eight to ten inches, were neither hidden nor defects. As social hosts, defendants had no obligation to mark the stakes, remove them, or warn plaintiff of their existence. That plaintiff claims not to have seen the stakes, makes no difference in the duty defendants owed to her. Moreover, nothing in the record suggests that defendants were actively negligent and caused plaintiff to fall. Summary judgment in this case was proper.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice