IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY K. HILDERBRAND and KATHRYN HILDERBRAND,	:	C.A. No. K13C-06-032 WLW
	:	Kent County
Plaintiffs,	:	
	:	
v.	:	
	:	
JOSEPH SKOCHELAK, WILLIAM B. WOTHERS & JEAN WOTHERS,	:	
	:	
Defendants.	:	

Submitted: October 18, 2016
Decided: November 16, 2016

ORDER

Upon Defendants William B. Wothers and Jean Wothers' Motion for Summary Judgment.
Granted.

Scott E. Chambers, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorney for Plaintiffs.

Brian T. McNelis, Esquire of Young & McNelis, Dover, Delaware; attorney for Defendants William B. Wothers and Jean Wothers.

WITHAM, R.J.

Before the Court is Defendants William and Jean Wothers's ("the Wothers") motion for summary judgment and Plaintiffs Gary and Kathryn Hildebrand's ("the Plaintiffs") response in opposition. Because the Wothers did not breach any duty owed to the Plaintiffs, the motion for summary judgment will be granted.

FACTS

This lawsuit arises out of a collision that occurred on Irish Hill Road in Kent County, Delaware. Defendant Joseph Skochelak stopped his truck in front of a vegetable stand to buy vegetables. The stand was operated by the Wothers and located on property owned by them. After buying the vegetables, Mr. Skochelak pulled away from the shoulder in front of the produce stand, started out eastbound on Irish Hill Road, and then made a right turn into a driveway 400 to 500 feet down the road. The driveway was also on the Wothers's property.

While Mr. Skochelak was backing out of the driveway, his truck was hit by a motorcycle driven by Gary Hildebrand, which was heading eastbound on the road. Mr. Hildebrand suffered injuries as a result of the collision, and he and his wife filed suit against both Mr. Skochelak and the Wothers. The Wothers filed this motion for summary judgment.

THE PARTIES' CONTENTIONS

The Wothers argue that they are entitled to summary judgment because (1) Mr. Skochelak was neither entering nor exiting the produce stand at the time of the accident, (2) the driveway had no signs allowing its use for turning around, (3) there was no requirement that the produce stand be licensed, and (4) the police report made no reference to any negligence on the Wothers's part.

The Plaintiffs respond that (1) whether Mr. Skochelak was entering or exiting the produce stand is a question of fact that bears on the question of whether egress was hazardous, (2) the Wothers breached their duty to the Plaintiffs by failing to block or post the driveway despite knowing that it was occasionally used "to reverse direction," and (3) the location of the stand and driveway within several hundred feet could be sufficient to warrant a conclusion that the Wothers' operation of the stand was negligent.

STANDARD OF REVIEW

To establish a claim of negligence, the plaintiff must show that the defendant owed him a duty of care, that the defendant breached that duty, and that the defendant's breach proximately caused the plaintiff's injury.[1] The Court will enter judgment as a matter of law in favor of the defendant if the plaintiff does not establish a prima facie case or if a jury could not find for the plaintiff under any "reasonable view of the evidence."[2]

"To be held liable in negligence, a defendant must have been under a legal obligation–a duty–to protect the plaintiff from the risk of harm which caused his injuries."[3] "[W]hether a duty exists is entirely a question of law, to be determined by reference to the body of statutes, rules, principles and precedents which make up the law; and it must be determined by the court."[4] If there is no duty, the trial court will

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[1] *Pipher v. Parsell*, 930 A.2d 890, 892 (Del. 2007) (citations omitted).

[2] *Id.*

[3] *Id.*

[4] *Id.*

enter judgment as a matter of law in favor of the defendant.[5]

DISCUSSION

The principal question the Court considers in reviewing this motion for summary judgment is whether the Plaintiffs have met their burden of establishing a prima facie case for negligence. Because the Plaintiffs' allegations fail the elemental requirement of establishing any breach of a duty owed to them by the Wothers, the Wothers are entitled to judgment as a matter of law.

"Generally, to determine whether one party owed another a duty of care, we follow the guidance of the Restatement (Second) of Torts."[6]

"A possessor of land is subject to liability for physical harm to others outside of the land caused by an activity carried on *by him* thereon which he realizes or should realize will involve an unreasonable risk of physical harm to them under the same conditions as though the activity were carried on at a neutral place."[7]

Relatedly, a "possessor of land who creates or permits to remain thereon an . . . artificial condition so near an existing highway that he realizes or should realize that it involves an unreasonable risk to others accidently brought into contact with such condition while traveling with reasonable care upon the highway, is subject to liability for physical harm thereby caused to persons who . . . are traveling on the highway."[8]

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[5] *Id.*

[6] *Riedel v. ICI Americas Inc.*, 968 A.2d 17, 20 (Del. 2009).

[7] Restatement (Second) of Torts § 371 (Am. Law Inst. 1975) (emphasis added).

[8] *Id.* § 368.

A guest on land is a business visitor, and therefore an invitee, if the guest is "invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land."[9] But a visitor remains an invitee "only while he is on the part of the land to which his invitation extends–or in other words, the part of the land upon which the possessor gives him reason to believe that his presence is desired for the purpose for which he has come."[10] "If the invitee goes outside of the area of his invitation, he becomes a trespasser or a licensee."[11] "The mere fact that the possessor knows that invitees in general . . . will be likely to go into parts of the premises to which he is not invited, is not enough in itself to bring such places within the area of invitation, unless the visitor is reasonably led to believe that he is so invited."[12]

In *Higgins v. Walls*, the Superior Court held that a landowner owed no duty to a passing motorist.[13] The plaintiff was a passing motorist who was injured by a shot

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[9] *Id.* § 332(3).

[10] *Id.* cmt. l.

[11] *Id.*; *see also Fahey v. Sayer*, 106 A.2d 513 (Del. 1954) (babysitter exceeded scope of invitation when she looked around for a bathroom on the first floor despite being told there was one on the second floor); *Reardon v. Exch. Furniture Store, Inc.*, 188 A. 704, 707 (Del. 1936) (plumber exceeded scope of invitation when he entered store basement to dispose of broken part that he had replaced); *Dittman v. Williams*, No. 96C-08-024, 1998 WL 960753, at *2 n.9 (Del. Super. Nov. 24, 1998) (visitor to premises when store was closed was not an invitee, but a trespasser or licensee); *Griffiths v. Delmarva Aircraft, Inc.*, No. 95C-11-019, 1997 WL 819111, at *2-3 (Del. Super. Dec. 31, 1997) (invitee became trespasser or licensee when she left office area where she was invited to answer phones and enters tarmac); *Rennick v. Glasgow Realty, Inc.*, 510 F. Supp. 638, 642–45 (D. Del. 1981) (restaurant patron became licensee when he left dining area and entered private storage area).

[12] Restatement (Second) of Torts § 332(3) cmt. l (Am. Law Inst. 1975).

[13] 901 A.2d 122, 139 (Del. Super. 2005).

fired by a trespassing, unlicensed hunter on the defendant's land.[14] The Court considered the fact that the landowner did not permit the unauthorized hunter on the property, or even know any unauthorized hunters were there.[15] The Court concluded that a landowner only owes a duty to a passing motorist if the landowner knows or should know that the activities occurring on his property constitute a dangerous condition.[16]

The Plaintiffs have not alleged that they were injured by an activity carried on by the Wothers. They make much of Mr. Skochelak's presence at the produce stand as an invitee of the Wothers, and they allege that there was no safe ingress or egress from the stand. But it is undisputed that Mr. Skochelak safely pulled away from his parking spot on the road's shoulder before executing a turnaround in the driveway. When he left the stand, entered his truck, started it, drove down the road to a driveway on another part of the property about four to five hundred feet away,[17] and pulled into the driveway, he ceased to be an invitee and exceeded the scope of his invitation. He was thus no longer a participant in any activity carried on by the Wothers. He entered and exited their driveway as either a licensee or a trespasser.

The Plaintiffs likewise have not alleged that the driveway was an unreasonably dangerous artificial condition. The Wothers had knowledge that some invitees to their stand used the driveway down the road as a turnaround. But that knowledge is

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[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] Wothers Dep. 24:8-13

not the type of knowledge needed to impose a duty on the Wothers as landowners. It thus would not help the Plaintiffs avoid summary judgment.

Rather, the Plaintiffs needed to show that the Wothers knew or should have known that the use of the driveway constituted an unreasonably dangerous condition. Here, the Plaintiffs have not demonstrated or even alleged any problem with the driveway or its location that might render it a foreseeably dangerous condition to passers-by. There was no evidence of an issue with visibility along the straight road or of visual obstacles like overgrown bushes. It follows that no reasonable jury could find evidence of duty and breach on the record presented. The Wothers are entitled to judgment as a matter of law.

Because it appears from the papers submitted by the parties that the Plaintiffs have abandoned their negligence *per se* allegation, which was premised on the lack of a state permit, the Court does not address the allegation here other than to note that it is wholly unsupported by admissible evidence.

CONCLUSION

The Plaintiffs have not shown that the Wothers breached any duty owed to the Plaintiffs. The Wothers's motion for summary judgment is thus **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh