

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Church Visitor Found to be a Licensee; No Duty to Inspect Owed

By Amanda Haverty-Harris

In *Sanders v Perfecting Church*, an unanimous unpublished opinion, the Court of Appeals concluded that the Defendant-Church did not invite people, including Plaintiff, to its property for an “essential commercial purpose.” Therefore, Plaintiff was a licensee who was owed no duty by Defendant to inspect the premises before her visit.

Plaintiff Sanders slipped and fell in motor oil in Defendant’s parking lot. It was undisputed that Plaintiff planned to attend Sunday church service on Defendant’s property on the day she was injured. However, “Plaintiff later asserted in an affidavit that she also planned to purchase a meal at Defendant’s café after the service.” With regard to the café, Defendant’s business manager stated in her affidavit that meals were available after church services “by those who attended the services at a minimal cost.” She further stated “there are no/minimal proceeds from the sale of these meals over and above the cost of their preparation” and if there are any proceeds, they are deposited into the church’s general fund “as an additional form of minimal contribution.”

In a Michigan premises liability action, “plaintiffs must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered damages.”

Benton v Dart Props, Inc., 270 Mich App 437 (2006). The duty owed to a visitor depends on whether the visitor is deemed to be a trespasser, a licensee, or an invitee when the injury occurred. *Taylor v Laban*, 241 Mich App 449 (2000).

A “trespasser” is a person who enters upon another’s land, without the landowner’s consent. The landowner owes no duty to the trespasser except to refrain from injuring him by “willful and wanton” misconduct.

A “licensee” is a person who is privileged to enter land of another by virtue of the possessor’s consent. A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee’s visit.

An “invitee” is “a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for

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Unlike other recent premises actions involving churches, the Court in *Sanders v Perfecting Church* found that a reasonable juror could not have concluded that the Defendant-Church invited people, including Plaintiff, to its premises for an “essential commercial purpose,” and held that Plaintiff was a licensee. The Court distinguished this case from previous cases which found the plaintiffs to be invitees because “the primary purpose of inviting people to defendant’s premises was for conducting religious services,” and Plaintiff attended services when she was injured. The plaintiffs in previous cases were hired to complete work on the premises or attended a non-religious activity on the church’s property.

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[the invitee's] reception." The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards. Thus, an invitee is entitled to the highest level of protection under premises liability law. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591 (2000). The *Stitt* Court further held that a plaintiff will only be found to be an invitee if the purpose for which she was invited onto the property is "directly tied to the owner's commercial business interests." *Id.* At 603-604.

In the present case, although Plaintiff testified that she planned to purchase a meal from Defendant's café on the day she was injured, the Court held that "a reasonable juror could not have concluded that Defendant invited people, including Plaintiff, to its premises on July 8, 2007, for an "essential commercial purpose." The predominant or essential purpose for which Defendant invited people to its premises was to hold religious services; the congregation was not required to stay and purchase any meals after the religious service, and any income generated from the sale of the post-service meals was minimal."

The Court concluded that because Plaintiff was not invited to Defendant's premises for an "essential commercial purpose," she was a licensee at the time of her injury and Defendant had no duty to warn her unless it knew of a hidden, unreasonably dangerous condition. *Id.* at 596.

The Court further noted that this case is distinguishable from other cases analyzed in *Stitt*, which held that the plaintiffs were invitees. Those cases involved a hired painter injured while painting the church building, a visitor that was injured when leaving a bingo game held on the church's property, and a visitor that was injured while attending a carnival held on the church's property that raised money for the church. These cases consistently held that an invitee status is "warranted when the visitor was on the church premises solely for a commercial business purpose." Notably, none of the plaintiffs in these cases were injured while religious services were being held at the church, unlike the case at hand.

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