

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

SALINA GLIDEWELL

Plaintiff, et al.,

Case No. 1416-CV01640

v.

Division 9

MICHAEL WEANT

Defendant, et al.

JUDGMENT/ORDER

Pending before the Court is Defendants' Motion For Summary Judgment. For the following reasons, the Motion is denied.

Background

On January 21, 2014, Plaintiff Salina Glidewell filed a Petition against Defendants Michael Weant and Lori Weant alleging the Defendants were negligent. More specifically, she alleged she entered the Defendants' premises "as a licensee for the purpose of delivering mail for the United States Postal Service," she "tripped over a shovel that had been lodged between the siding and a plant and was not easily visible," and "Defendants knew or should have known of the dangerous condition of their premises and should have taken steps to inspect, warn and/or remedy the condition to prevent injury to Plaintiff." On October 31, 2014, Defendants moved for summary judgment accepting Plaintiff was a "licensee." On November 10, 2014, Plaintiff moved to file an Amended Petition to change Plaintiff's alleged status from "licensee" to "invitee." This Motion was granted, and, on December 19, 2014, Plaintiff filed her First Amended Petition.¹ Defendants maintain summary judgment is proper under either alleged status.

¹ In Plaintiff's original Petition, Plaintiff did set out the "invitee" standard and thus, Defendants were not surprised or prejudiced by this amendment.

Standard

Summary judgment is appropriate when the moving party demonstrates there is no genuine issue of material fact and is therefore entitled to judgment as a matter of law. *Hill v. Ford Motor Co.*, 277 S.W.3d 659, 664 (Mo. 2009). A genuine issue of material fact must be real and substantial and cannot merely be made up of conjecture, theory, and possibility. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 378 (Mo. 1993). A defending party is entitled to summary judgment if “the non-movant, after an adequate period of discovery, has not been able to produce, and will not be able to produce, evidence sufficient to allow the trier of fact to find the existence of any one of the claimant's elements.” *Id.* at 381.

Analysis

For purposes of the summary judgment motion, the parties do not dispute:

- Plaintiff was on Defendants’ property to deliver the mail.
- Plaintiff chose not to use the front porch stairs to access their mailbox.
- Plaintiff created her own path to the mailbox to the left side of the steps by stepping over a timber divider that separated the front lawn and concrete sidewalk from the mulched landscaping bed.
- Plaintiff stepped into the mulched landscaping bed.
- Plaintiff did not look down to see where she was walking while exiting the mulched landscaping bed.
- Plaintiff saw a broom lying in the mulched landscaping bed but did not see the snow shovel she tripped on.
- Plaintiff does not know whether or not Defendants were aware the snow shovel could have been buried under the leaves in the mulched bed.
- Defendants did not have any actual knowledge that the broom and snow shovel had been lying on the ground or that the snow shovel was covered by leaves.

- Defendants testified that although they knew mail carriers walked through their lawn, they did not have any actual knowledge Plaintiff was not using the front porch steps or that she was walking through the mulched landscaping bed.

A mail carrier, when upon her official duties, enters a premises as an invitee. *Paubel v. Hitz*, 96 S.W.2d 369, 369 (Mo. 1936); *Adams v. Badgett*, 114 S.W.3d 432, 437 (Mo. Ct. App. 2003) (An invitee is one who enters the premises with the consent of the possessor for some purpose of real benefit or interest to the possessor). A land owner owes invitees “the duty to exercise reasonable care to protect them against both known dangers and those that would be revealed by inspection” through the use of “ordinary care.” *Adams*, 114 S.W.3d at 438 (Mo. Ct. App. 2003).

Defendants argue it is undisputed Plaintiff exceeded the scope of her invitation at the time of her injury by deviating from the Defendants’ porch and walking through their mulched landscaping transforming her into a trespasser. The cases cited by Defendants, however, are distinguishable from the case at hand. In all of them, the “trespasser” clearly and undisputedly deviated from the proper purpose of being on the property. *See, e.g. Cochran v. Burger King Corp.*, 937 S.W.2d 358, 362 (Mo. Ct. App. 1996) (trespasser ceased using the property for a walkway when he attempted to enter the dumpster); *Walters v. Markwardt*, 237 S.W.2d 177, 179 (Mo. 1951) (trespasser was on the property in the dark, not as a customer).

Here, it is undisputed that Plaintiff never deviated from her job of delivering the mail, and it is anticipated mail carriers will walk outside the bounds of sidewalks and normal pathways. It cannot be found, as a matter of law, she acted in a manner inconsistent with the scope of an express or implied invitation. *Gruetzemacher v. Billings*, 348 S.W.2d 952, 958 (Mo. 1961) (portion of the premises to which the invitation extends is to be determined from all the facts and circumstances existing at the time of the injury). Disputed facts remain that must be determined by a jury. Thus, Defendants’ Motion For Summary Judgment must be denied.

Therefore, for the reasons stated above. It is hereby

ORDERED Defendants' Motion To Strike Sur-Reply is granted. It is further

ORDERED Defendants' Motion For Summary Judgment is denied.

02-Feb-2015

DATE



JOEL P. FAHNESTOCK, JUDGE

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was hand delivered/faxed/emailed/mailed and/or sent through the eFiling system to the following on 2nd day of February, 2015:

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