

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CRYSTAL DENNIS, as parent)
and legal guardian of **VELVIN**)
MORGAN, JR., a minor,)

Plaintiffs,)

v.)

STEPHANIE YVONNE DENNIS)
and **JAMES DENNIS**,)

Defendants.)

C.A. No. 99C-08-205 PLA

Submitted: August 29, 2000

Decided: January 31, 2001

MEMORANDUM OPINION

On Defendant James Dennis's Motion for Summary Judgment. Granted.

Michael D. Carr, Esquire, Three Mill Road, Suite 307, Wilmington, Delaware 19806.
Attorney for Plaintiffs.

Carolyn M. McNiece, Esquire, 1225 King Street, Suite 301, Wilmington, Delaware
19801. Attorney for Defendant Stephanie Dennis.

Thomas S. Bouchelle, Esquire, Christiana Executive Campus, 131 Continental Drive,
Suite 407, Newark, Delaware 19801. Attorney for Defendant, James Dennis.

CARPENTER, J.

Defendant James Dennis (“Mr. Dennis”) moves for summary judgment, asserting that he is protected against liability in this negligence action under the Delaware Guest Statute, 25 *Del. C.* §1501. For the reasons set forth below, the Court¹ grants his motion.

FACTS

On November 16, 1998, Plaintiff Crystal Dennis (“Crystal”) and her thirteen-month-old son, Velvin Morgan, Jr. (“Velvin”)(collectively, the “Plaintiffs”) went to the home of Mr. Dennis, who is Crystal’s father and Velvin’s grandfather. Defendant Stephanie Dennis (“Stephanie”), who is Crystal’s sister, was also present at her father’s home. The sisters had gathered at Mr. Dennis’s residence in order to clean it for Thanksgiving dinner. While the daughters were cleaning, Mr. Dennis babysat Velvin. While all three adults and Velvin were in the kitchen prior to eating breakfast, Stephanie warmed water in the microwave for hot tea. She took the cup out of the microwave and placed it on the counter. Velvin, who was sitting on his grandfather’s lap, got up and walked over to the counter, reached up and poured the scolding water on himself. As a result, he sustained first and second degree burns on his neck and

¹ This case was originally assigned to Judge Bifferato. Upon his retirement, this dispositive motion was assigned to Judge Carpenter. The case is now assigned to Judge Ableman.

chest. The Plaintiffs filed suit against Mr. Dennis and Stephanie (collectively the “Defendants”), alleging that the Defendants’ negligence was the proximate cause of Velvin’s injuries.

STANDARD OF REVIEW

Summary judgment will be granted when, in viewing the record in the light most favorable to the non-moving party, the movant has shown that no genuine issues of material fact exist and that the movant is entitled to judgment as a matter of law.²

When a motion for summary judgment is supported by a showing that there are no material issues of fact, the burden shifts to a nonmoving party to demonstrate that there are material issues of fact.³

DISCUSSION

Mr. Dennis argues that he is protected against liability under the Delaware Guest Statute, *25 Del. C.* §1501, which provides:

No person who enters onto private residential or farm premises owned or occupied by another person, either as a guest without payment or as a trespasser, shall have a cause of action against the owner or occupier of such premises for any injuries or damages sustained by such person while on the premises unless such accident was intentional on the part of the owner or occupier or was caused by the wilful or wanton disregard of the rights of others.⁴

² Super. Ct. Civ. R. 56(c).

³ *Moore v. Sizemore*, Del. Supr., 405 A.2d 679 (1979).

⁴ *25 Del. C.* §1501.

Since there is no dispute that the accident was neither intentional nor caused by the wilful or wanton disregard for the rights of others, Mr. Dennis asserts that he is immunized under the statute because his grandson was a “guest without payment.”⁵

The legislative intent behind 25 *Del. C.* §1501 was to protect a landowner from suits by guests based on simple acts of negligence.⁶ In defining the meaning of “guest without payment,” it must be shown that the homeowner received or expected no benefit of value from the guest’s presence.⁷ Delaware courts have construed the language of 25 *Del. C.* §1501 broadly, holding that even social guests who confer some benefit upon a property owner will be guests without payment unless that benefit

⁵ There is no dispute that Mr. Dennis is the owner of the private residence in question.

⁶ *Stratford Apartments, Inc. v. Fleming*, Del. Supr., 305 A.2d 624, 626 (1973). The Court went on to state that the protection in 25 *Del. C.* §1501 was similar to that of the motor vehicle owner or operator in the automobile guest statute.

⁷ *Id.*

is more than de minimus.⁸ While the benefit to the landowner can be indirect and need not be financial in nature, it has been broadly interpreted to require evidence that the landowner was getting or expecting to get a benefit of value for which other persons would have to pay.⁹

⁸ *Leuzzi v. Lovell*, Del. Super., C.A. No. 97C-12-166, Herlihy, J. (Oct. 15, 1998)(Mem. Op.) at 2.

⁹ *See Stratford Apartments*, 305 A.2d at 626.

Thus, the issue for the Court is whether Velvin was a guest without payment and more specifically, whether Mr. Dennis received a benefit from his grandson's presence. The Plaintiffs argue that since Crystal would have been unable to perform the cleaning services for her father unless she could bring Velvin with her and have Mr. Dennis babysit him, he has received a benefit. Further, the Plaintiffs assert that Crystal was a business invitee¹⁰ and that status should be imputed onto Velvin.

First, in viewing the record in the light most favorable to the Plaintiffs, the Court finds that the record simply fails to support a finding that Velvin's presence conferred a benefit onto his grandfather. Except for the enjoyment associated with spending quality time with one's grandchild, the Court has difficulty contemplating a situation where a thirteen-month-old child would be able to confer a benefit upon his grandfather as contemplated by 25 *Del. C.* §1501. Other than the good lawyering effort of counsel to explore all possible avenues of recovery, there is no reasonable basis to conclude that the grandson was anything other than a guest who is unable to recover for any negligent acts of the grandfather.

¹⁰ The landowner only has a duty to business invitees to make the premises reasonably safe. *DiOssi v. Maroney*, Del. Supr., 548 A.2d 1361, 1365 (1988). A business invitee is defined as a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land. *Id.* at 1366.

Furthermore, the Court is not persuaded that Crystal's presence in her father's home can reasonably be characterized as a business invitee.¹¹ This was simply a case of a daughter helping her father clean his home in anticipation of the family's Thanksgiving dinner. This gracious and loving act of a daughter is now arguably being equated to a commercial cleaning service with the exception that payment was not money but was in the form of the care and love of one's grandchild. Under the facts of this case, the Court simply refuses to find that the normal interaction of one's family expected in a civilized society can be interpreted as engaging in business practices.

¹¹ *See supra* note 10.

Moreover, even if the Plaintiffs were able to present unique facts to transform this interaction to a business invitee status for Crystal, this Court has previously examined the status of each person independently for purposes of 25 *Del. C.* §1501¹² and has found in dictum that status is not automatically imputed in the absence of a cogent theory.¹³ Therefore, even assuming *arguendo* that Crystal could be characterized as a business invitee, there are no facts, conduct, or actions of the grandson, which would reasonably allow this status to be imputed onto him.

¹² In *Leuzzi v. Lovell*, Del. Super., C.A. No. 97C-12-166, Herlihy, J. (Oct. 15, 1998)(Mem. Op.), the Court examined the status of a couple independently for purposes of 25 *Del. C.* §1501. While on their way to dinner, Plaintiff Mary Leuzzi accompanied her husband to the defendants' home. Mr. Leuzzi was on a business errand to pick up a saw that was purchased by the defendant for Mr. Leuzzi as partial payment for work he had done. Mr. Leuzzi needed the saw for another job. The couple both exited the truck together so that Mr. Leuzzi could pick up the saw and Mrs. Leuzzi could examine flowers on the front porch. As she was going up the stairs, she tripped and fell, sustaining injuries. The Court found that Mrs. Leuzzi's purpose in exiting the truck and going up the stairs was purely social and that despite Mr. Leuzzi's presence on the defendants' premise as an arguable business visitor, Mrs. Leuzzi's presence conferred no benefit on the defendants that changed her status from that as a social guest to a business visitor. The Court further noted that "[a]bsent some credible evidence of economic benefit to the land owner or occupier, courts are reluctant to find that social guests are business invitees, rather than guests without payment." *Id.* at 3. In finding that she was purely a guest without payment, the Court stated:

Under no party's version of the events, however, did Mrs. Leuzzi assist her husband in removing the saw from the basement by physically handling the saw, lighting her husband's way, or even watching him retrieve it. There is not a scintilla of evidence that Mrs. Leuzzi went onto the defendants' property to inspect the work her husband had been doing.

Id. *Leuzzi* demonstrates that the Court views the role of each person separately for purposes of 25 *Del. C.* §1501. In other words, the mere presence of Mr. Leuzzi, as a business invitee, does not automatically impute that status onto his accompanying wife.

¹³ See *Lackford v. Manco Products, Inc.*, Del. Super., C.A. No. 96C-04-068, Bifferato, J. (March 23, 1999)(Letter Op.) at 4, n. 5.

Finally, the Court believes that age does not play a factor in evaluating Velvin's role independently of his mother. Despite Velvin's young age, there is no authority or rationale that leads the Court to conclude that Velvin's role should not be addressed independently nor that due to his young age, his mother's status should be automatically imputed onto him. The Court finds that both individuals are to be examined independently, and despite his mother's purpose for being at Mr. Dennis's home, Velvin was a guest without payment, precluded from recovery, because he independently conferred no benefit on the landowner as contemplated by *25 Del. C.* §1501.

CONCLUSION

For the reasons set forth above, Mr. Dennis's Motion for Summary Judgment is GRANTED.

Judge William C. Carpenter, Jr.