If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

SELMA HILL, Personal Representative of the ESTATE OF JAYLEN HILL,

Plaintiff-Appellant,

v

RECREATIONAL ADVENTURES CAMPGROUND, LLC,

Defendant-Appellee,

and

KAMPGROUNDS OF AMERICA, INC.,

Defendant.

UNPUBLISHED
September 21, 2026
10:44 AM

No. 375034
Monroe Circuit Court
LC No. 24-147340-NO

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

In this action arising from a drowning at defendant's campground, plaintiff appeals by right the trial court's order granting summary disposition in defendant's favor.[1] We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

This case arises from the drowning death of 15-year-old Jaylen Hill in a man-made swimming pond at defendant's campground. At the time of the incident, there were signs in the campground and surrounding the pond indicating that no lifeguard was present, that parents were responsible for watching their children, and that swimming was undertaken at the individuals' own

[1] Defendant Kampgrounds of America, Inc. did not participate in this case before the trial court. Our use of the singular term defendant refers to Recreational Adventures Campground, LLC, only.

risk. The pond had an 8-inch thick "soft murky bottom" and zero visibility at 6 feet. The deepest part in the center of the pond was cordoned off by four warning signs on posts connected by a buoy line. The depth of the water at the warning signs ranged from 2.2 feet to 3.1 feet, but the deepest point of the marked zone was nearly four times that average at 11 feet.

Jaylen and his half-brother, Chris, went swimming in the pond with a new acquaintance, Dylan. Jaylen's mother confirmed that he did not have very much swimming experience. Chris and Dylan crossed to the other side of the buoy line and raced each other under the water. When Chris and Dylan resurfaced after racing, they were unable to locate Jaylen. His body was eventually found on the bottom of the pond at a depth of approximately 8 to 9 feet.

Plaintiff commenced this action alleging claims of negligence and premises liability. Following discovery, defendant moved for summary disposition under MCR 2.116(C)(10). Defendant argued that plaintiff's claim sounded in premises liability, not negligence, and even if it did sound in negligence, defendant had no duty to supervise or provide a lifeguard. Defendant further asserted that the premises-liability claim failed because plaintiff could not identify a dangerous condition and, as the land possessor, defendant acted reasonably under the circumstances. Defendant supported its motion with a human factors expert report by Dr. Farheen S. Khan and an aquatics safety expert report by Michael Oostman. Defendant also included a report by a master self-contained underwater breathing apparatus (also known as "scuba") diver, Kristopher Joswiak, which detailed the conditions of the pond as it appeared underwater on three days after Jaylen's drowning.[2]

Plaintiff countered that whether the swimming pond itself was a hazardous condition was a question of fact and defendant did not exercise reasonable care in placing warning signs because the signs were insufficient to make the dangerous aspects of the water apparent to guests. Plaintiff further asserted that Jaylen's death was foreseeable because of another drowning incident the previous year. Plaintiff also argued that she could bring both a negligence claim and a premises-liability claim under the circumstances at hand. Plaintiff proffered two expert reports. The first, prepared by Gerald M. Dworkin, discussed the safety of the pond and the use of lifeguards, while the second report, prepared by Dr. Lila F. Laux, opined on the human factors involved.[3]

The trial court held a hearing and granted summary disposition in favor of defendant. This appeal followed.

---

[2] Plaintiff's counsel and defendant's counsel represented the parties in a previous case involving the nonfatal drowning of thirteen-year-old Andrew Snook in the same swimming pond. Joswiak conducted dive operations and research at the swimming pond on behalf of plaintiff's counsel in the Snook case.

[3] Laux's and Dworkin's reports were written in support of the plaintiff in the Snook case and relied on the information gathered by Joswiak three days after Jaylen's drowning.

II. STANDARD OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 59; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(10) is warranted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (cleaned up). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must consider the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*. A court may not assess credibility, weigh evidence, or resolve factual disputes in analyzing whether a genuine issue of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." *Skinner*, 445 Mich at 161.

III. ANALYSIS

Plaintiff argues that the trial court erred by granting summary disposition in favor of defendant because there are genuine issue of material of fact whether the swimming pond was a hazardous condition and whether defendant breached its duty to plaintiff. Plaintiff also contends her negligence claim exists separately from premises liability. We agree in part and disagree in part.

A. EXPERT REPORTS

Preliminarily, defendant challenges the admissibility of the unsworn opinions in Dworkin's and Laux's reports that were prepared for a different case and argues that they are insufficient to create a question of fact.

Defendant asserts that the reports are irrelevant under MRE 401 and inadmissible under MRE 402 because they were prepared for a different case and do not address Jaylen's drowning. Defendant further contends that the reports are unreliable under MCL 600.2955 and do not meet the requirements of MRE 702 because they are not based on the facts and circumstances of this case, Dworkin and Laux were not deposed, and plaintiff did not show that the conditions of the pond were the same in both instances. Under MRE 401, evidence is relevant if it has "any tendency to make a fact more or less probable than it would be without the evidence," and "the fact is of consequence in determining the action." MRE 401. MRE 402 provides that "all relevant evidence is admissible unless provided otherwise . . . ." MRE 702 require that an expert's opinion be reliable and assist the trier of fact, and MCL 600.2955(1) provides a nonexhaustive list of seven factors that a trial court should consider, including whether other experts would rely on the same basis to form an opinion. *Danhoff v Fahim*, 513 Mich 427, 453; 15 NW3d 262 (2024).

The expert reports proffered by plaintiff discuss the conditions of the pond, the effectiveness of the signs, applicable safety standards, and adolescent behavior generally. The information was gathered at the same pond three days after Jaylen drowned and the information

was also used by defendants' experts in preparing their opinions in this case. The reports meet the requirements of MRE 702, are reliable under MCL 600.2955, and the analysis within the reports is relevant to the issues here.

Defendant further maintains that unsworn opinions cannot create a genuine issue of material fact. We disagree. It is well established that a "reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the *substantively admissible evidence*." *Maiden v Rozwood,* 461 Mich 109, 121; 597 NW2d 817, 824 (1999) (emphasis added). This standard was incorporated into the court rules with the addition of MCR 2.116(G)(6) and expounded upon by this Court in *Barnard,* 285 Mich App at 373 ("[A]lthough the evidence must be substantively admissible, it does not have to be in admissible form."). A party responding to a motion for summary disposition "[does] not have to lay the foundation for the admission of the [evidence] in order for the court to consider them on a motion for summary disposition as long as there was a plausible basis for the admission of the [evidence]." *Id*. Although the experts' opinions were unsworn, they may still be considered.

B. NEGLIGENCE

"It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710–711; 742 NW2d 399 (2007). "Courts are not bound by the labels that parties attach to their claims because this would exalt form over substance[.]" *Brendel v Morris*, 345 Mich App 138, 149; 4 NW3d 776 (2023) (cleaned up). "Michigan law distinguishes between claims arising from ordinary negligence and claims premised on a condition of the land." *Buhalis v Trinity Continuing Care Serv*, 296 Mich App 685, 692; 822 NW2d 254 (2012), overruled in part on other grounds by *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95; 1 NW3d 44 (2023). In a premises-liability case, "liability arises solely from the defendant's duty as an owner, possessor, or occupier of land." *Id*. "If the plaintiff's injury arose from an allegedly dangerous condition on the land, the action sounds in premises liability rather than ordinary negligence; this is true even when the plaintiff alleges that the premises possessor created the condition giving rise to the plaintiff's injury." *Id*.

In this case, plaintiff asserts that Jaylen's injuries arose from an allegedly dangerous condition on the land—a man-made swimming pond with deep, murky water—and claims that defendant failed to exercise reasonable care to protect guests from the hazards and risks associated with the swimming pond. The trial court did not err by concluding that plaintiff's claim is one of premises liability rather than ordinary negligence.

C. PREMISES LIABILITY

"All negligence actions, including those based on premises liability, require a plaintiff to prove four essential elements: duty, breach, causation, and harm." *Kandil-Elsayed*, 512 Mich at 110. In premises-liability actions, the duty owed by a defendant depends on whether the plaintiff is classified as a trespasser, licensee, or invitee. *Id*. at 111. In this case, it is undisputed that Jaylen

was an invitee[4] and thus defendant owed him "a duty 'to exercise reasonable care to protect [him] from an unreasonable risk of harm caused by a dangerous condition of the land.' " *Id*. at 112, quoting *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). This duty of care includes not only the obligation "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." *Tripp v Baker*, 346 Mich App 257, 263; 12 NW3d 45 (2023) (cleaned up).[5] An "invitor must inspect the premises to discover any possible dangerous conditions of which the invitor is not aware and take reasonable precautions to protect the invitees from dangers that are foreseeable from use." *Hammack v Lutheran Social Servs*, 211 Mich App 1, 6; 535 NW2d 215 (1995). In evaluating whether a land possessor breached its duty, a court should consider whether an average person with ordinary intelligence would have discovered the hazard, and whether the defendant would have anticipated the harm despite it being open and obvious. *Kandil-Elsayed*, 512 Mich at 152-153. "[T]he question of breach—whether defendants' conduct in the particular case is below the general standard of care—is a question of fact for the jury." *Id*. at 112 (cleaned up). Only "where the evidence presented to a court concerning breach generates no questions of fact [can] the issue be decided by the judge as a matter of law." *Id*. at 112 n 2, citing MCR 2.116(C)(10).

Plaintiff maintains that there is a genuine issue of material fact whether the swimming pond presents an unreasonable risk of harm and is a dangerous condition on the premises. We agree. The Joswiak report relied on by defendant indicated the depth of the water at the warning signs was 2.4 feet, 3.1 feet, 2.4 feet, and 2.2 feet, respectively, but the deepest point of the marked zone was nearly four times that average at 11 feet. Additionally, when Joswiak reached 6 feet of depth, he had zero visibility. He noted a thick muck of approximately 8 inches of thickness on the bottom of the pond consisting of decomposed organic matter. In pushing his flashlight beneath the muck at the bottom of the pond, Joswiak found it hid all light. Utilizing the information gathered by Joswiak, plaintiff's aquatic safety expert, Dworkin, opined that the swimming pond "is a very dangerous aquatic venue" on the basis of the depth beyond the buoys, the "soft murky bottom[,] and the lack of visibility." Viewing the facts in the light most favorable to plaintiff, reasonable persons could conclude that the swimming pond constituted a dangerous condition posing an unreasonable risk of harm to invitees.

Plaintiff further argues that there is a genuine issue of material fact whether defendant breached its duty. We agree. Dworkin opined that the swimming pond violated aquatic safety standards. He stated that the posted signs did not prohibit swimming beyond the buoys or "indicate

---

[4] "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 the invitee's reception." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000) (cleaned up).

[5] While this Court's decision in *Tripp* predates our Supreme Court's decision in *Kandil-Elsayed*, we do not read *Kandil-Elsayed* to disrupt or undermine the particular propositions for which *Tripp* is cited in this opinion. See, e.g., *Kandil-Elsayed*, 512 Mich at 148 (stressing that its "decision does not alter the standard of reasonable care owed to an invitee").

the heightened risk posed by the deep, dark and murky water beyond the buoys." He stated that additional safety precautions should have been taken in light of the circumstances, including prohibiting swimming beyond the buoy lines and providing lifeguards. If swimming was permitted beyond the buoy lines, then Dworkin opined that defendant should have established and enforced a requirement that all swimmers wear lifejackets while swimming in the deep-water area and "had qualified lifeguards strategically positioned around the perimeter of the pond."

Additionally, plaintiff's human factors expert, Laux, opined, "The yellow sign stating NO LIFEGUARD ON DUTY SWIM AT YOUR OWN RISK! does not warn people approaching the pond of any hazardous conditions associated with the pond, indicates it is permissible to swim, and leaves it up to the person viewing the sign to determine what his or her 'own risk' is." Laux also noted swimming ponds are different than a swimming pool, which can result in misperceptions, and the murkiness of this pond made it difficult to accurately assess the conditions. She continued, "Young adolescents . . . would not likely be warned off by this sign as it does not *prohibit* swimming." Although the signs indicated deep water, they did not "explain why that is a danger" to inexperienced swimmers. According to Joswiak's report, the actual depth at those signs was under 40 inches. Laux stated, "[C]hildren are typically unable to make adequate decisions about safety," and it is unreasonable to expect that all children would at all times be under supervision. Laux concluded that "[i]t was foreseeable that young adolescents . . . would swim in the pond even when their parents/guardians were not 'supervising' them." She opined, "[T]he system [of safety] was compromised and made dangerous because the large swimming pond was not attended by a lifeguard," despite the hazard being "clearly recognized by the facility owners."

Defendant maintains that it fulfilled its duty to exercise reasonable care to warn or protect invitees. Defendant provided its own expert reports that concluded the information on the website and at the campground, in conjunction with eighteen signs, "contained sufficient information regarding the safe and proper use of the swimming lake." Inside the campground there were detailed signs warning swimmers, and there were flotation rings at the pond. Within the pond, there were four signs on posts framing out the deeper area and flagging the deep water beyond the buoys as dangerous. Khan, defendant's human factors expert, opined that enough information was provided by the campground for parents to make assessments about the skill levels of their children. Further, Jaylen's father admitted that Jaylen would be able to read the signs indicating these warnings, and plaintiff testified that Jaylen did not have experience swimming. Khan concluded her report with a section on "Adolescence and Fun-Seeking Behavior" to indicate "Jaylen chose to enter deep water, apparently after seeing Chris and Dylan do so, despite a potential mismatch between his abilities and his evident desire to swim in deep water with Chris and Dylan."

Viewing the evidence in the light most favorable to plaintiff, reasonable persons could disagree on whether Jaylen knew or had reason to know of the condition and the risk involved, whether defendant should have expected that Jaylen would not have discovered the hazard before falling victim to it, and whether defendant failed to take adequate precautions to protect swimmers. Accordingly, there is a question of fact for the jury to decide whether defendant breached its duty of reasonable care. See *Kandil-Elsayed*, 512 Mich at 112. See also *Kreiner v Yezdbick*, 22 Mich App 581, 589; 177 NW2d 629 (1970) (concluding that it was a question for the jury to resolve

whether the defendants were negligent[6] in failing to provide life-saving equipment or a lifeguard and in not properly mooring a raft after a teenage boy drowned, despite assistance from fellow swimmers, while trying to swim to shore from an unsecured raft that had floated to deep water).

As an alternative ground to affirm, defendant argues that plaintiff cannot establish causation. The basis of the trial court's decision was whether plaintiff could show there was a question of fact regarding breach.[7] "We need not address an issue that was not the basis of the trial court's decision." *Aguirre v Dep't of Corrections*, 307 Mich App 315, 326; 859 NW2d 267 (2014). We therefore decline to reach it.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mariam S. Bazzi
/s/ Sima G. Patel
/s/ Matthew S. Ackerman

[6] "While this Court did not say so explicitly, *Kreiner* appears to have also been a premises-liability case." *Wheeler v Central Mich Inns, Inc,* 292 Mich App 300, 307; 807 NW2d 909 (2011).

[7] We note that defendant did not raise a causation argument in its motion for summary disposition. Rather, defendant first raised the issue in its reply to plaintiff's response brief, which is not permitted under MCR 2.116(G)(A)(iii) ("Reply briefs must be confined to rebuttal of the arguments in the nonmoving party or parties' response brief . . . ."). See also *Equity Funding, Inc v Village of Milford*, 342 Mich App 342, 348; 994 NW2d 859 (2022).