

STATE OF MICHIGAN  
IN THE SUPREME COURT

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LINDA MOLITORIS,

Plaintiff/Appellant,

v

SAINT MARY MAGDALEN  
CATHOLIC CHURCH,

Defendant/Appellee.

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Supreme Court Case No: 166699

Court of Appeals Docket No: 364820

Livingston County Circuit Court  
Case No. 22-31366-NO

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**DEFENDANT/APPELLEE SAINT MARY MAGDALEN CATHOLIC CHURCH'S  
RESPONSE TO PLAINTIFF'S APPLICATION FOR LEAVE**

**\*\*ORAL ARGUMENT REQUESTED\*\***

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## COUNTER-STATEMENT OF QUESTIONS PRESENTED

Plaintiff is a church parishioner and volunteer who sustained injuries when she allegedly slipped and fell on ice in Defendant's parking lot after volunteering to prepare meals for donation at Defendant's church. The issues for this Court on this Application are:

1. Did the Court of Appeals properly hold that Plaintiff, a volunteer at the Church, was a licensee on Defendant's property at the time of her fall?

The Court of Appeals answered: "Yes."

Defendant/Appellee answers: "Yes."

Plaintiff/Appellant answers: "No."

2. Did the Court of Appeals properly find as a matter of law that Defendant did not owe Plaintiff – a licensee on Defendant's property – any duty to warn of the possibility of ice in the parking lot on the night of February 22, 2021?

The Court of Appeals answered: "Yes."

Defendant/Appellee answers: "Yes."

Plaintiff/Appellant answers: "No."

3. Do the facts and circumstances here present a compelling case for reviewing long-established law and reversing this Court's decision in *Stitt v Holland Life Abundant Fellowship*, 462 Mich 591; 614 NW2d 88 (2000) and abandon Michigan's traditional status-based approach for premises liability claims?

The Court of Appeals answered: "No."

Defendant/Appellee answers: "No."

Plaintiff/Appellant answers: "Yes."

**APPENDIX**

- Appx. 1 Photographs
- Appx. 2 Plaintiff's Complaint
- Appx. 3 Defendant's Brief in Support of Motion for Summary Disposition
- Appx. 4 Plaintiff's Brief in Opposition to Defendant's Motion for Summary Disposition
- Appx. 5 Defendant's Reply Brief in Support of Summary Disposition
- Appx. 6 Plaintiff/Appellant's Brief in Support of Her Appeal as of Right from the Order Granting Defendant/Appellee Saint Mary Magdalen Catholic Church's Motion for Summary Disposition Entered in the 44<sup>th</sup> Circuit Court
- Appx. 7 Defendant/Appellee Saint Mary Magdalen Catholic Church's Brief on Appeal
- Appx. 8 Deposition Transcript of Marcus Dobek
- Appx. 9 Deposition Transcript of Jeri Gawlowski
- Appx. 10 Deposition Transcript of Mary Lou Silver

## INTRODUCTION

This case does not merit Supreme Court review. Plaintiff has failed to outline any error with the decision of the Court of Appeals below and sets forth no precedent which would entitle her – a church parishioner and volunteer at the time of her fall – to the invitee status which she seeks in this case<sup>1</sup>. The Court of Appeals correctly applied this Court’s reasoning from *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2000) and subsequent published case law and found that Plaintiff was a licensee on Defendant-Appellee’s property at the time she fell. Plaintiff’s Application does not even discuss that existing precedent and the rationale set forth therein, but instead attempts to re-raise the very same arguments which those precedential decisions rejected.

Given the clear deficiencies of her case under existing precedent, Plaintiff asks this Court to reverse long-established law. Plaintiff argues that this Court should abandon Michigan’s traditional status-based categories of invitee, licensee, and trespasser in premises cases. In asking this Court to radically alter Michigan’s premises liability framework for the second time in less than a year, Plaintiff relies on the partial concurrence/dissent in the unpublished opinion below, which advocates for the wholesale adoption of the unitary standard set forth in the Third Restatement. As this Court’s justices have noted, Michigan has never adopted the Restatement of Torts in full, but rather “it is our caselaw, as developed through the years, that provides the rule of law for this State.” *Hoffner v Lanctoe*, 492 Mich. 450, 478-479; 821 NW2d 88 (2012). Just this past year, while largely overhauling Michigan’s premises liability scheme with respect to invitees in the case of *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95; 1 NW3d 44 (2023), this Court elected

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<sup>1</sup> At no point in this case has Plaintiff ever argued that Defendant is liable to her as a licensee, only as an invitee. Accordingly, Plaintiff has effectively conceded the fact that if she was a licensee at the time of her fall, then her premises claim fails.

to leave in place those status-based categories. *Kandil-Elsayed*, 512 Mich at 143. Further, the requisite stare decisis analysis shows that reversing longstanding precedent is inappropriate in this case. *Robinson v Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000). Accordingly, this Court should DENY Plaintiff's Application.

### FACTS

Plaintiff is a parishioner and volunteer at Defendant St. Mary Magdalen's Catholic Church. On February 22, 2021, Plaintiff was volunteering at St. Mary Magdalen's for "Magdalen's Kitchen," a weekly event where meals are prepared and provided for free to those in the community. Plaintiff does not recall what the weather was like on that date. (Deposition of Linda Molitoris, p 22) (Plaintiff's Appx. C, p 036A). She also does not recall whether there was any precipitation. (*Id.*, p 037A).

Plaintiff arrived at St. Mary Magdalen's at 3:00 p.m. that day. (*Id.*). She parked her vehicle and walked through the parking lot to enter the church. (*Id.*). She did not encounter any issues with snow or ice as she walked through the parking lot. (*Id.*, p 038A). Plaintiff remained at the church until approximately 7:00 p.m. that evening. (*Id.*, p 039A). While at the church, Plaintiff spent the evening cooking and helping prepare the meals that were given away that evening. (*Id.*, p 027A). Plaintiff did not go outside at any point in time between the time she arrived at St. Mary Magdalen's and the time she left. (*Id.*, p 039A). Plaintiff exited through the same door which she had entered previously and walked towards her vehicle in the parking lot. (*Id.*, p 040A). Plaintiff claims that she was looking where she was walking and did not see any snow or ice in the parking lot. (*Id.*, p 042A). Plaintiff does not recall any precipitation falling at this time and does not recall the pavement in the parking lot appearing wet. (*Id.*). Plaintiff claims that the parking lot was dark

at the time she exited and that the lights in the parking lot were not on<sup>2</sup>. (*Id.*, p 039A). Plaintiff walked down the sidewalk and walked towards her vehicle. (*Id.*, p 040A). According to photographs of the property reviewed by Plaintiff at her deposition, Plaintiff then crossed a drive and traversed another sidewalk before entering what she referred to as the “main parking lot.” (*Id.*)



Photograph of the parking lot. (**Appendix 1**).

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<sup>2</sup> Plaintiff’s fellow volunteers were deposed in this case and all testified that when they exited the church and approached Plaintiff, the lights in the parking lot were on and the parking lot was well-lit. (Deposition of Marcus Dobek, p 12) (**Appx 8**); (Deposition of Jeri Gawlowski, p 14) (**Appx 9**); (Deposition of Mary Lou Silvers, p 8) (**Appx 10**). This singular fact dispute is pointed out only for completeness of the record: The law detailed below proves that whether the parking lot was well-lit or not is irrelevant. Also, for completeness, all witnesses other than Plaintiff testified that the parking lot surface was not slippery or wet and they encountered no issues as they walked through the parking lot. (Gawlowski, p 7; Dobek, p 7; Silvers, pp 12, 13)

Plaintiff then walked through the main parking lot towards her vehicle. (*Id.*) As Plaintiff reached what appears to be the first for non-handicap parking, she suddenly slipped and fell to the ground. (*Id.*)



Photograph depicting the approximate area of Plaintiff's fall as identified by her during her deposition. (Appx. 1).

Plaintiff alleges that as she was on the ground, she could feel ice in the area around her. (Plaintiff's Appx. C, p 043A). Following her fall, Plaintiff was aided by other volunteers at Magdalen's Kitchen – including Marc Dobek, Jeri Gawlowski, and Mary Lou Silvers, who called 911 and remained with her until an ambulance arrived to transport her to the hospital. (*Id.*, p 044A).

## **PROCEEDINGS BELOW**

### **I. Proceedings in the Trial Court.**

Plaintiff filed a two-count Complaint on January 18, 2022, alleging claims of ordinary negligence and premises liability (Count II). (**Appx 2**). After the matter proceeded through

discovery, Defendant filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(10), arguing that there was no genuine dispute of material fact that Plaintiff's claim sounded solely in premises liability, and that Defendant did not owe Plaintiff – a licensee on the property – any duty to warn of the possibility for ice to accumulate in its parking lot on February 22, 2021. (**Appx 3**). Plaintiff filed her Brief in Response to Defendant's Motion for Summary Disposition. (**Appx 4**). Defendant filed a Reply Brief in Support of Summary Disposition. (**Appx 5**).

The trial court heard oral argument on January 5, 2023. At the hearing, Plaintiff did not contest that her claim sounded solely in premises liability and agreed to dismissal of the ordinary negligence portion of Plaintiff's Complaint. The trial court then found as a matter of law that Plaintiff was a licensee on St. Mary Magdalen's property at the time of her fall and, as a licensee, was not owed any duty by the church to warn of the possibility for ice in the parking lot. The trial court entered its Order granting Defendant's Motion for Summary Disposition and dismissing Plaintiff's Complaint with prejudice on January 24, 2023. (Plaintiff's Appx. A).

## **II. Proceedings in the Court of Appeals.**

On February 3, 2023, Plaintiff filed her claim of appeal as of right with the Court of Appeals pursuant to MCR 7.203(A)(1). The parties filed their briefs on appeal, (**Appx 6** and **Appx 7**) and on November 14, 2023, the Court of Appeals heard oral argument in this matter.

On January 4, 2024, the Court of Appeals issued an unpublished per curiam opinion affirming the trial court's grant of summary disposition. (Plaintiff's Appx., pp 005A-013A). In its opinion, the Court of Appeals applied this Court's holding in *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2000) and subsequent published Court of Appeals decisions involving church parishioners and volunteers and held as a matter of law that Plaintiff was a licensee on St. Mary Magdalen's property at the time of her fall. (*Id.*, pp 006A-007A). After finding that Plaintiff was a licensee, the Court of Appeals then determined that Plaintiff had failed

to create a genuine issue of material fact that St. Mary Magdalen's was liable to her under a licensee theory and therefore the trial court properly dismissed her premises liability claim. (*Id.*, p 008A). While joining in the Court of Appeals' opinion that Plaintiff was a licensee at the time of her fall, Judge Gleicher authored her own opinion concurring in part and dissenting in part. (*Id.*, p 009A-013A). Citing the Third Restatement of Torts and case law from other jurisdictions, Judge Gleicher asked this Court to reconsider *Stitt* and to abandon the distinction between licensees and invitees in premises liability claims. (*Id.*, p 010A).

On February 15, 2024, Plaintiff filed her Application for Leave to Appeal with this Court pursuant to MCR 7.305(C)(2).

### STANDARD OF REVIEW

This Court reviews a trial court's resolution of a summary disposition motion de novo. *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013).

### LAW AND ARGUMENT<sup>3</sup>

#### I. Plaintiff was a licensee of St. Mary Magdalen's property at the time of her fall.

In order to prevail on a premises liability claim, like any negligence claim, a plaintiff must demonstrate that (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach proximately caused the plaintiff to be injured, and (4) the plaintiff sustained damages. *Moning v Alfonso*, 400 Mich 425, 437; 254 NW2d 759 (1977). As both the trial court and the Court of Appeals properly found below, Plaintiff's premises liability claim fails the

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<sup>3</sup> Pages 16-22 of Plaintiff's Application for Leave discuss the open and obvious hazard doctrine, despite the fact that no part of the Court of Appeals' opinion in this case discussed the open and obvious hazard doctrine or cited it as a basis for affirming the trial court's dismissal of Plaintiff's premises liability claim. It is unclear why Plaintiff devotes a substantial part of her application to a doctrine not at issue in this appeal.

very first of these requirements as she cannot demonstrate that the Church owed her any duty in this case.

Whether a defendant owes a particular plaintiff a duty is generally a question of law to be determined by the court. *Bailey v Schaff*, 494 Mich 595, 603; 835 NW2d 413 (2013). The level of duty owed to a plaintiff depends on the plaintiff's status as an invitee, licensee, or trespasser on the defendant's premises. *Kandil-Elsayed v F&E Oil, Inc*, 512 Mich 95, 144; 1 NW3d 44 (2023). A licensee is one who is permitted to enter the premises of another by virtue of the landowner's consent. *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013). A landowner only owes a licensee a duty to warn the licensee of any hidden dangers which the owner knows or has reason to know of, and only if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved. *Kosmalski v St John's Lutheran Church*, 251 Mich App 56, 65; 680 NW2d 50 (2004); *Burnett v Bruner*, 247 Mich App 365, 378; 636 NW2d 773 (2001). A landowner has no duty of inspection or affirmative care to make its premises safe for a licensee's visit. *Sanders, supra*, at 5. In general, licensees assume the ordinary risks associated with their visit. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000).

By contrast, 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 the premises safe for the invitee. *Id.* at 596-97. A 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. *Id.* at 597. This duty requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards. *Id.* An invitee is entitled to the highest level of protection under premises

liability law. *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 256; 235 NW2d 732 (1975).

**II. The Court of Appeals in this case correctly applied this Court’s precedent from *Stitt* and found that Plaintiff was a licensee as a matter of law.**

This Court has determined that individuals who enter upon church property for noncommercial purposes are licensees as a matter of law. *Stitt*, 462 Mich at 595. Where a plaintiff has presented evidence from which invitee status may be inferred, then the question of the level of duty owed is one for the jury. *Id.* However, where a plaintiff fails to present evidence which raises a factual dispute as to whether a church invited people onto its property for an “essential commercial purpose,” the plaintiff’s status as a licensee is properly determined by the court. *Sanders*, 303 Mich App at 8

In *Stitt*, this Court rejected the “public invitee” doctrine set forth in the Second Restatement of Torts. *Id.* at 603. The *Stitt* court analyzed prior decisions<sup>4</sup> involving individuals injured while on church property and reiterated that invitee status had only been applied to individuals who were on the church premises for a “commercial business purpose.” *Id.* at 600-01. Consistent with this, the Court reiterated that a precondition to someone being entitled to invitee status is that their presence on the property must be for some “business purpose.” *Id.* at 604. “Thus, we hold that the owner's reason for inviting persons onto the premises is the primary consideration when

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<sup>4</sup> See *Bruce v Central Methodist Episcopal Church*, 147 Mich 230; 110 NW 951 (1907) (plaintiff was a contractor who had been hired to paint the ceiling of the defendant church); *Manning v Bishop of Marquette*, 345 Mich 130; 76 NW2d 75 (1956) (plaintiff was injured while leaving a church-sponsored bingo game); *Kenzorek v Guardian Angel Catholic Parish*, 178 Mich App 562; 444 NW2d 213 (1989), *overruled on other grounds in Orel v Uni-Rak Sales Co*, 454 Mich 564; 563 NW2d 241 (1997) (plaintiff was injured while attending a carnival that was a fundraiser for the defendant church).

determining the visitor's status: In order to establish invitee status, a plaintiff must show that the premises were held open for a commercial purpose.” *Id.*

This Court then adopted the general rule from *McNulty v Hurley*, 97 So2d 185 (Fla 1957), that a church visitor has the status of a licensee while on church property. *Id.* In doing so, it rejected the notion that churchgoers bestow a commercial benefit simply by attending services or making voluntary financial contributions to the church. *Id.* at 606. Notably, the *Stitt* court also held – contrary to the argument that Plaintiff has continued to make (in an even more attenuated form) on appeal, that direct financial contributions to a church, i.e., tithes, do not entitle churchgoers to invitee status *Id.* at 11.

Following *Stitt*, Michigan courts have consistently found church parishioners and volunteers to be licensees as their presence is not directly tied to any commercial business purpose. In *Kosmalski v St John’s Lutheran Church*, 261 Mich App 56; 680 NW2d 50 (2004), the Court of Appeals found that a plaintiff who was injured while assisting her grandmother in volunteering at the defendant church’s bible school was a licensee as a matter of law. *Id.* at 63. The plaintiff in *Kosmalski* argued that at the time of her injury, she was providing “child-care services for a ‘material or commercial purpose’ rather than one of ‘a spiritual, religious, or social nature.’” *Id.* at 63. In rejecting the characterization of plaintiff’s charitable volunteer activities as being commercial in nature, the *Kosmalski* court applied this Court’s rationale in *Stitt* and explained:

Nor do we believe that the benefit to St. John's is of a material or commercial nature. Plaintiffs argue that child-care services are recognized throughout the country as a service that is bought and sold and is therefore commercial. However, we reject the assumption underlying plaintiffs' argument that because a particular service such as child care can have a commercial purpose in some or even most circumstances it must be recognized as commercial in all situations, including for purposes of determining invitee status. Rather, the focus as determined by *Stitt* is on the owner's reason for inviting the person onto the premises. Thus, the required analysis is an assessment case by case of the particular circumstances and reasons for the injured person's presence on the property.

Here, the reason for St. John's invitation to Marilyn to participate in its vacation bible school was as a *volunteer* child-care provider. Although this may have relieved St. John's of potentially paying for the service if volunteers could not be secured, the fact remains that St. John's purpose for inviting Marilyn as a volunteer was indisputably noncommercial. The relationship between Marilyn and St. John's did not have the pecuniary quid pro quo that *Stitt* requires for imposing the higher duty of care owed to invitees. *Id.* at 604, 614 N.W.2d 88. Consequently, we conclude that Marilyn's status was that of a licensee upon St. John's property at the time she was injured.

*Id.* (emphasis in original).

Similarly, in *Sanders v Perfecting Church, supra*, the plaintiff was a parishioner who was injured when she slipped and fell in the defendant church's parking lot. 303 Mich App at 2. After the trial court found as a matter of law that the plaintiff was a licensee at the time of her fall and was not owed any duty by the defendant, the plaintiff appealed. *Id.* at 3. On appeal, the plaintiff argued that although she was at the church on the day of her injury for religious services, she intended to purchase a meal at the defendant's café after the service. *Id.* at 5-6. There was evidence that the meals were made available to those who attended services at "minimal cost" and that any profits from the defendant's sale of the meals was placed into the church's general fund "as an additional form of minimal contribution." *Id.* In affirming the trial court's dismissal of plaintiff's claim, the Court of Appeals held that the plaintiff was properly found to be a licensee on the church's property at the time of her fall as a matter of law. *Id.* In doing so, the *Sanders* court reasoned that "defendant's primary purpose in having people attend its premises was for religious services, any 'commercial' aspect was purely ancillary to the main religious purpose and minimal in scope." *Id.*

Applying this precedent, the Court of Appeals in this case found that Plaintiff was a licensee as a matter of law as her purpose on the property of St. Mary Magdalen's at the time of her fall was non-commercial in nature:

The predominant or essential purpose for which the Church invited people onto its premises for Magdalen’s Kitchen was to feed the less fortunate. No one bought any meals at that community event, so any income generated by that event should be considered insufficient to establish that the event had a commercial purpose. *Stitt*, 462 Mich at 604 (“the prospect of pecuniary gain is a sort of quid pro quo for the higher duty of care owed to invitees”).

Here, the trial court reasoned that, “at the time she fell, [p]laintiff was on the [d]efendant’s premises as a volunteer, and her activities were not commercial in nature, nor done for commercial purposes.” Similarly, in *Kosmalski v St John’s Lutheran Church*, 261 Mich App 56; 680 NW2d 50 (2004), this Court concluded that a volunteer injured while working at a church’s vacation bible school “in the job of a playground helper” was not offering “child-care services for ‘a material or commercial purpose’ rather than one of ‘a spiritual, religious or social nature.’ ” *Id.* at 57, 62-63. This Court reached that conclusion, and thereby treated the injured volunteer as a licensee, even though the volunteer was not a church member. *Id.* at 62. Accordingly, the trial court in this case ruled in a manner faithful to our precedent in concluding that plaintiff was a licensee—as opposed to an invitee—when she went to the Church to serve as a volunteer at Magdalen’s Kitchen.

(Plaintiff’s Appx. B, p 007A).

In arguing for heightened status as an invitee in her Application for Leave, Plaintiff completely ignores this Court’s reasoning in *Stitt* and the subsequent published Court of Appeals opinions of *Kosmalski* and *Sanders* and advances the exact arguments which were rejected in those cases. Plaintiff once again makes the specious – and rather cynical – argument that a church’s program of giving away meals to those in need is ultimately a commercial endeavor done for the purpose of increasing monetary donations. According to Plaintiff, her volunteering to prepare free meals assisted in the Church’s community outreach, which has the potential to expand the Church’s membership (Plaintiff’s Application for Leave, pp 22- 24). Plaintiff then posits that the Church receives a commercial benefit from this activity because hypothetical new churchgoers may themselves make hypothetical voluntary donations to the Church. (*Id.*). Plaintiff even concedes that her charitable acts are akin to paying tithes, but rather than tithing financially,

Plaintiff is tithing by way of her charitable work<sup>5</sup>. (*Id.* at p 23). This is the very same argument that was rejected by this Court in *Stitt* and the subsequent Court of Appeals cases of *Kosmalski* and *Sanders* – in a much more attenuated form. This Court has held that direct financial contributions from a parishioner to a church do not create a commercial relationship between the church and parishioner sufficient to bestow invitee status. *Stitt*, 462 Mich at 604. Yet Plaintiff seeks invitee status on the basis of the voluntary donation of her time, which might then result in future financial contributions from others. If direct financial donations to a church do not qualify an individual for invitee status, then charitable acts which might indirectly lead to financial donations from hypothetical third parties certainly do not. The Court of Appeals correctly acknowledged this reality.

In this case, Plaintiff was not on the Church’s premises for a commercial or business purpose on February 22, 2021. Rather, Plaintiff was at the Church to volunteer and help prepare free meals to give away to individuals in the community. (Plaintiff’s Appx. C, p 036A). The purpose of feeding those in need is charity, not commerce. Accordingly, the Court of Appeals properly concluded as a matter of law that Plaintiff was a licensee on the property at the time of her fall.

**III. The Court of Appeals properly found that Plaintiff – a licensee – was not owed any duty in this case.**

After finding that Plaintiff was a licensee at the time of her fall, the Court of Appeals then applied the law governing licensees in Michigan and found that Plaintiff’s premises liability claim

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<sup>5</sup> Plaintiff mistakenly relies on the *Stitt* court’s basis for holding that voluntary financial donations to a church – i.e., tithes – are not. “Because the custom of tithing is biblical, many people practice it as part of their faith.” (Plaintiff’s Application for Leave, p 23). It is therefore, a voluntary and charitable act done for religious or spiritual purposes, not business or commercial purposes. *Stitt*, 462 Mich at 604.

failed as a matter of law. (Opinion at \*4, Plaintiff’s Appendix C, p 008A). In this respect, the Court of Appeals stated:

Indeed, *Kosmalski* illustrates that a licensee injured on the premises of a church while performing volunteer activities may survive summary disposition when there are “hidden dangers the [church] knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved.” *Id.* at 65. In those circumstances, the church owes the licensee “a duty to warn the licensee of any hidden dangers[.]” *Id.* To be sure, the duty to warn is limited to hazards the church actually knows exist, so the church owes no duty to warn of hazards just because further inspection might have revealed the hazards. *Shaw v Wiegartz*, 1 Mich App 271, 277; 135 NW2d 565 (1965). Also, if the licensee knows or has reason to know of a hazard and the risk involved, the church has no duty to warn the licensee of the hazard. *Blackwell v Franchi*, 502 Mich 918, 919; 914 NW2d 900 (2018). In sum, Michigan does not impose “a duty owed by a landowner to his licensees to repair or to inspect his property.” *Burnett*, 247 Mich App at 372. “Rather, the landowner simply owes the licensee a duty to warn of unreasonably dangerous conditions, when the licensee neither knows nor has reason to know of the condition and risk involved.” *Id.*

(*Id.*).

The Court of Appeals then looked to the record before the trial court and concluded that the trial court had properly found that Plaintiff – as a licensee – had failed to create a genuine dispute of material fact as to whether St. Mary Magdalen’s owed her any duty in this case:

First, the record contains no evidence that the Church was aware of the icy condition of the parking lot. Second, plaintiff has lived in Michigan for decades and readily understood on the evening of her fall that there could be ice in the parking lot on a cold day in February. Third, plaintiff has not established that the ice on which she fell presented an unreasonable risk of harm. Fourth, because plaintiff was a licensee, the Church had no duty to inspect the parking lot, discover the ice, or either remove the ice or warn plaintiff of its existence.

Placing these conclusions in the analysis of a premises liability claim of a licensee such as plaintiff, the trial court appropriately resolved defendant’s summary disposition motion. Specifically, the Church owed no duty to warn plaintiff of the icy parking lot because the Church was unaware of that hazard, the Church had no duty to inspect the parking lot, and plaintiff had sufficient experience in Michigan to know, or have reason to know, of the risk of ice on a cold night in February. Beyond that, the icy parking lot did not constitute an “unreasonably dangerous condition.” Consequently, even though a landowner owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not

know or have reason to know of the hidden danger and the risk involved . . . plaintiff cannot satisfy any – much less all – of those requirements.

*Id.* (internal citations and quotations omitted).

In her Application for Leave, Plaintiff does not dispute the Court of Appeals' licensee analysis. In fact, Plaintiff has never argued at any point during this litigation that St. Mary Magdalen's owed her any duty as a licensee or that St. Mary Magdalen's breached that duty. Rather, Plaintiff has consistently only opted to argue the duties that she believes that she was owed as an *invitee*. Accordingly, the Court of Appeals' conclusion that Plaintiff was not owed any duty as a licensee has not been preserved on appeal and should not be used as a basis for this Court to grant leave. See *Mack v Detroit*, 467 Mich 186, 207; 649 NW2d 47 (2002); see also *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

**IV. This court should neither overrule *Stitt* nor adopt the Third Restatement's unitary standard for premises cases.**

In her Application, Plaintiff argues that leave should be granted in this case so that this Court can abolish the traditional status-based approach to premises liability cases in Michigan. (Plaintiff's Application for Leave at pp 13-16). Plaintiff asks this Court to adopt the Third Restatement's a unitary duty of reasonable care to entrants on the land. (*Id.*)

The Restatement is not law. Michigan has never taken the approach of wholesale adoption of the Restatement of Torts, but rather has looked to it at times for guidance. *Hoffner v Lanctoe*, 492 Mich. 450, 478-479, 821 N.W.2d 88 (2012). “[I]t is our caselaw, as developed through the years, that provides the rule of law for this State.” *Id.* Notably, this Court rejected the Second Restatement's “public invitee” classification in *Stitt* in favor of a rule which made sense under Michigan law – reserving the highest duty of care for those individuals invited onto property for the commercial benefit of the landowner. *Stitt, supra* at 603.

Further, just this past year this Court drastically altered Michigan’s premises liability framework in *Kandil-Elsayed*, shifting the analysis of the open and obvious hazard doctrine from the element of duty to the element of breach. *Kandil-Elsayed*, 512 Mich at 104. Yet, in making this change, this Court left in place the traditional status-based classifications of trespasser, licensee, and invitee. *Id.* at 143. The Court should not now depart from that standard less than a year later.

Michigan’s longstanding policy of adhering to stare decisis also cuts against this Court now overruling *Stitt*. Stare decisis is generally “the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Robinson v City of Detroit*, 462 Mich 439, 463; 613 NW2d 307 (2000). While stare decisis is a policy, not a command, and does not apply mechanically to forever prevent the Court from overruling earlier erroneous decisions, this Court has identified serious considerations which must be taken into account when evaluating whether to overrule a prior decision. *Id.* at 463-64. Such factors include whether the prior decision was wrongly decided, “whether [it] defies ‘practical workability,’ whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision.” *Kandil-Elsayed*, 512 Mich at 132-33.

Plaintiff’s application does not address these considerations or articulate why exactly this Court should overrule *Stitt* less than a year after reaffirming its central holding. However, a review of these factors here favors leaving *Stitt* intact. First, *Stitt* was not wrongly decided. The *Stitt* decision was consistent with longstanding common law principles in Michigan, which have historically recognized three distinct categories for persons who enter upon land:

Historically, Michigan has recognized three common-law categories for persons who enter upon the land or premises of another: (1) trespasser, (2) licensee, or (3) invitee. *Wymer v. Holmes*, 429 Mich. 66, 71, n. 1, 412 N.W.2d 213 (1987).

Michigan has not abandoned these common-law classifications. *Reetz v. Tipit, Inc.*, 151 Mich. App. 150, 153, 390 N.W.2d 653 (1986). Each of these categories corresponds to a different standard of care that is owed to those injured on the owner's premises. Thus, a landowner's duty to a visitor depends on that visitor's status. *Wymer, supra* at 71, n. 1, 412 N.W.2d 213.

*Stitt*, 462 Mich at 596.

*Stitt* merely reaffirmed those three longstanding categories – just as this Court did last year in *Kandil-Elsayed*. There can be no argument that *Stitt* misinterpreted those categories.

Second, there is also no argument from Plaintiff that the *Stitt* rule defies practical workability. A decision defies practical workability when it generates confusion among courts trying to apply it and sows division. *Kandil-Elsayed*, 512 Mich at 140 (citing *Devillers v Auto Club Ins Ass'n*, 473 Mich. 562, 585-86; 702 NW2d 539 (2005)). While Plaintiff quotes the dissent below for the proposition that Michigan should join other jurisdictions that have adopted the unitary approach, Plaintiff provides no authority demonstrating that Michigan courts or residents have struggled with the existing status-based approach. This differs significantly from the circumstances this Court found in *Kandil-Elsayed*, wherein this Court acknowledged that *Lugo* had “generated considerable confusion and division.” *Kandil-Elsayed*, 512 Mich at 142. Here, Plaintiff identifies no confusion or division among courts in applying *Stitt* and the traditional status-based approach.

Third, overruling *Stitt* would create undue hardship for landowners who for years have relied on the existing state of law. Abolishing the status-based analysis would suddenly require all landowners to afford the same level of protection to any individual that enters their property – whether invited or not, known or unknown, exempting only “flagrant trespassers<sup>6</sup>.” This would

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<sup>6</sup> The Restatement distinguishes a flagrant trespasser from an ordinary trespasser and defines it as “egregious or atrocious” and provides a list of factors which may distinguish a flagrant trespasser from an ordinary one, which include: (1) entry that results in the commission of a crime directed at the land possessor or the land possessor's family, guests, or property; (2) entry for the purpose of committing such a crime, even if it is not accomplished; (3) entry for another illegal or improper

not only create hardships for entities like churches and other places of worship, who often hold their doors open and welcome the public onto their property free of charge, but also every individual landowner in Michigan, who would be required to inspect their property and safekeep it for potential unknown and uninvited entrants. Such a requirement is contrary to longstanding general negligence principles holding that there is no duty to aid or protect another absent a special relationship. *Bailey v Schaff*, 494 Mich 595, 604; 835 NW2d 413 (2013). Historically, Michigan courts have conditioned such a special relationship “on the control that a possessor of premises . . . exerts over the premises” in applying the status-based test. *Id.* Special relationships therefore exist between an invitor and an invitee, and a licensor and a licensee. *Id.* But no such special relationship exists with respect to a trespasser, and thus a landowner has no affirmative duty to aid or protect a trespasser. *Stitt*, 462 Mich at 596. Removing these status-based classifications would destroy the basis for imposing negligence liability on a landowner for failing to protect an individual on his or her property and instead would impose a blanket duty applying with equal force to those with whom the landowner has no relationship at all.

Plaintiff also overlooks the fact that the status-based categories serve as important guideposts that help courts and landowners define what is *reasonable* under particular circumstances. In the case of a trespasser, it is reasonable that the landowner merely refrain

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purpose; (4) entry despite efforts by the land possessor to prevent trespass and specifically to prevent entrance by the plaintiff; (5) the extent of effort by the plaintiff to defeat the exclusion efforts of the land possessor, including such acts as ignoring no-trespassing signs and defeating gates, fences, or locks; (6) repeated trespasses by the plaintiff, especially in defiance of communication by the land possessor seeking to bar such entries; and (7) entry that results in damage to the land possessor's person, family, or property. Restatement (Third) of Torts: Phys & Emot Harm § 52 TD No 6 (2009).

injuring them through willful and wanton misconduct. *Stitt*, 462 Mich at 596. In the context of licensees, a reasonable landowner has the duty 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.” *Id.* With respect to invitees, Michigan law imposes additional duties 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.” *Id.* at 597. This additional duty of inspection affords invitees a heightened level of protection, *Quinlivan v. Great Atlantic & Pacific Tea Co., Inc.*, 395 Mich. 244; 235 N.W.2d 732 (1975), and is perfectly logical: if a landowner is going to invite someone onto their property for their benefit, they should ensure that their property is safe for the invitee’s visit. For decades, these categories have helped Michigan courts define what “reasonable” means in the context of premises liability cases. Removing these categories would remove this guidance and require a jury to define what is reasonable in nearly every premises liability case.

Lastly, Plaintiff cites no change in the law in Michigan over the past 24 years which warrants a reversal of *Stitt*. In fact, the most drastic change in the premises liability arena came last year with this Court’s decision in *Kandil-Elsayed*, which left the status-based classifications of *Stitt* in place. Further, while *Kandil-Elsayed* was a major change to premises liability law in Michigan, it does not impact the applicability of *Stitt* and the duties owed to licensees. *Kandil-Elsayed* dealt with the open and obvious hazard doctrine – a doctrine applicable to invitees – a did not alter the law with respect to licensees.

Ultimately, while Plaintiff urges this Court to grant leave and effectively overrule *Stitt* and abandon Michigan’s longstanding status-based approach to premises cases, Plaintiff provides this Court with no compelling reason to take such drastic action. This Court chose to reaffirm

Michigan's use of status-based classifications in premises liability cases less than a year ago. It should not suddenly change course now.

**V. This is not an appropriate case for analyzing Plaintiff's request because even if the court adopted the Third Restatement's unitary standard, the outcome of this case would not change.**

Lastly, this Court should deny leave in this case because even if this Court were to adopt the Third Restatement's unitary standard for premises cases, the result here would not change. Plaintiff failed to present any evidence in the trial court that St. Mary Magdalen's failed to act reasonably at the time of her fall and dismissal would still be warranted in this case.

Plaintiff in this case does not allege that St. Mary Magdalen's created any hazardous condition which led to her fall. Rather, her allegations are that St. Mary Magdalen's failed to take affirmative measures to protect her from a hazard which it reasonably should have known about. (Plaintiff's Application for Leave, p 25). In sum, Plaintiff's Application for Leave alleges that St. Mary Magdalen's should have inspected the property, discovered the alleged ice, and either warned her of its existence or remedied the condition. (*Id.*, p 18). But Plaintiff's allegations were not supported by the evidence presented to the trial court in this case. Specifically, Plaintiff's own sworn testimony refutes the notion that the conditions present on the night of her fall should have put St. Mary Magdalen's on notice of ice on the property and she denied that remedial measures should have been taken to make the property safe for her.

- 2 Q Your allegations in this case essentially are that the  
3 church failed to take reasonable measures to protect  
4 you from this fall, right?
- 5 A Correct.
- 6 Q That's a fair summary?
- 7 A Correct.
- 8 Q In your own words, what do you believe the church  
9 failed to do?
- 10 A Looking back at it, I think the lights should be on in  
11 the parking lot if there's people in that building at  
12 night.
- 13 Q Do you know what time the lights come on in the  
14 parking lot?
- 15 A No, I do not.
- 16 Q Anything else you feel the church failed to do?
- 17 A No.
- 18 Q You don't recall whether it appeared that they should  
19 have salted or plowed that day?
- 20 A No, because when I walked in it was clear as far as I  
21 remember, and then when I walked out I had no idea  
22 what had happened while we were in there.

(Plaintiff's Appx. C, p 067A).

Plaintiff's testimony thus concedes that the existing conditions on the date of her fall should not have prompted St. Mary Magdalen's to take affirmative measures to ensure that the parking lot was completely free of any potential ice. Accordingly, Plaintiff has failed to produce evidence that St. Mary Magdalen's did not take "reasonable measures . . . within a reasonable time after an

accumulation of ice . . . to diminish the hazard of injury” to Plaintiff. *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975).

Further, while Plaintiff alleges that the parking lot was dark and the parking lot lights were not on as she exited the church – an allegation which is contradicted by all record evidence<sup>7</sup> in this case – even if this allegation were accepted as true it would be irrelevant<sup>8</sup>. The lighting in this case simply would not have made a difference, since “black ice is nearly impossible to see with the naked eye, even in a properly lit area.” (Plaintiff’s Application for Leave at p 20). Since Plaintiff concedes that there is nothing that St. Mary Magdalen’s should have done to discover or remedy

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<sup>7</sup> Plaintiff misrepresents the lighting conditions of the parking lot at the time of her fall in her Application for Leave, claiming that “visibility in the parking lot was so murky that night, the person who found Plaintiff after her fall, Marcus Dobek, could not even see her.” (Plaintiff’s Application at p 18). Plaintiff also wrongly states in her application that “Ms. Molitoris had several witnesses testify it took a while to find her in the parking lot due to low visibility” - yet does not cite anything in the record supporting this statement. In reality, no witnesses testified to that effect in this case. All witnesses deposed that were present on the night of Plaintiff’s fall confirmed that the parking lot lights were on, and they had no difficulty seeing in the parking lot. Marcus Dobek, the individual who found Plaintiff, testified that the lights were on in the parking lot and that he did not have any difficulty seeing in the parking lot – directly contradicting what Plaintiff has claimed in her Application for Leave to Appeal. (Appx. 8, p 108). Mary Lou Silvers testified that the lights were on and that the parking lot was “relatively bright.” (Appx. 10, p 144). Jeri Gawlowski testified that the lights were on in the parking lot that evening and that she did not have any difficulty seeing in the parking lot. (Appx. 9, p 129). Contrary to what Plaintiff claims, there is no evidence that any of these individuals stated that they had any difficulty finding her in the parking lot.

<sup>8</sup> In support of her inadequate lighting argument, Plaintiff also urges this Court to rely on the unpublished Court of Appeals case of *Davis v. SCG Hotel Investors Holdings Reit, et. al.*, No. 349419, which found that lighting conditions were relevant to consider in determining whether a snow-covered hole on the defendant’s premises was an open and obvious danger. (Plaintiff’s Application for Leave at p 20). Plaintiff also references, but does not cite, “numerous other opinions in Michigan” regarding the impact of lighting on the application of the open and obvious hazard doctrine. But even if this Court were to adopt the Restatement’s unitary reasonableness standard, the dispositive issue in this case would not be whether the alleged ice in the parking lot was an open and obvious hazard. Rather, the issue would be whether St. Mary Magdalen’s acted reasonably under the existing conditions. Plaintiff has failed to produce evidence that St. Mary Magdalen’s acted unreasonably in this case.

the alleged black ice, she has failed to produce any evidence that St. Mary Magdalen's did not take reasonable measures to diminish the hazard presented by ice on its property and her premises claim would still fails under the Third Restatement's "unitary duty of reasonable care to entrants on the land." 2 Restatement Torts, 3d, §51.

**CONCLUSION AND RELIEF REQUESTED**

For the foregoing reasons, Defendant/Appellee requests that this Court DENY Plaintiff's Application for Leave to Appeal.

Respectfully submitted,

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Catholic Church

Dated: March 14, 2024

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